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CAPE COD
COMMISSION

DATE: December 15, 2011

TO: Joel G. Crowell, President
Cape Cod Cooperative Bank
25 Benjamin Franklin Way
Hyannis, MA 02601

FROM: Cape Cod Commission

RE: Development of Regional Impact Hardship Exemption
Cape Cod Commission Act, Sections 12, 13 and 23

APPLICANT: Joel G. Crowell, President
Cape Cod Cooperative Bank

PROJECT #: DRI/HDEX-11008

PROJECT: Cape Cod Cooperative Bank Preliminary Plan

LOCATION: 588 Main Street, Route 130, Mashpee, MA

BOOK/PAGE: Book 23803 Page 144

DECISION OF THE CAPE COD COMMISSION

SUMMARY

The Cape Cod Commission (Commission) hereby approves with conditions the application of Joel G. Crowell, President, Cape Cod Cooperative Bank (Applicant) for the proposed recombination and reorganization of an existing subdivision into a new arrangement of commercial, industrial and open space lots, including the realignment of the existing subdivision road, Rhiannon's Way, as a Development of Regional Impact (DRI) Hardship Exemption (HDEX) in accordance with Sections 12, 13 and 23 of the Commission Act (Act). This decision is rendered pursuant to a unanimous vote of the Commission on December 15, 2011.

PROJECT DESCRIPTION

The proposed project that is the subject of this decision is 48.09 acres of land located at 588 Main Street, Route 130 in Mashpee that is currently subdivided into five lots. According to the site plans provided by the Applicant, and the *Application Narrative*, the proposed project is the recombination and reorganization of an existing subdivision into a new arrangement of commercial, industrial and open space lots. The proposed project would also include the

realignment of the existing subdivision road, Rhiannon's Way. The proposal would maintain the two existing commercial lots, increase the number of industrial lots from two to nine, and create a 28.6 acre open space lot. According to the site plans provided with the Application, the site is split by two Town zoning districts. The area closest to Route 130 is zoned *Commercial (C-3)* while the remainder of the land is zoned *Industrial (I-1)*.

PROCEDURAL HISTORY

On March 21, 2011, Commission staff received a referral of the project as a DRI from the Mashpee Planning Board, through Mary Waygan, Board Chair.

The Applicant was informed by a March 22, 2011 letter from the Cape Cod Commission (Commission) staff that the DRI hearing period would need to be opened by May 19, 2011.

The Applicant was sent an Email by Commission staff on April 26, 2011 and a letter dated May 5, 2011 noting that no application had been filed with the Commission. The May 5, 2011 letter to the Applicant also noted that the Commission would procedurally open the hearing period by Hearing Officer on May 19, 2011. It also noted that the Commission was required to close the DRI hearing period by August 16, 2011.

Because the Commission had not received a completed DRI application, the DRI hearing period was opened by a Hearing Officer on May 19, 2011.

On May 26, 2011, Commission staff received a DRI application/Hardship Exemption request and application fee from the Applicant.

On June 8, 2011, Commission staff sent a letter to the Applicant noting that the DRI/Hardship Exemption application was incomplete and describing the additional information needed to substantially complete the application materials.

On August 11, 2011, a Commission Subcommittee held a substantive public hearing on the DRI/HDEX application/request.

On November 29, 2011, a Commission Subcommittee held a meeting to deliberate on the DRI/HDEX request.

On December 6, 2011, a Commission Subcommittee held a meeting to discuss and review a draft decision.

On December 15, 2011, the final public hearing was held before the full Commission on the draft written DRI decision.

JURISDICTION

The project qualifies as a DRI pursuant to Section 3(c) of the Commission's *Enabling Regulations* (revised March 2011) as *"[a]ny development that proposes to divide parcel(s) of land totaling 30 acres or more in common ownership or control on or after September 30, 1994, including the assembly and recombination of lots..."*

MATERIALS SUBMITTED FOR THE RECORD

In addition to the list of materials submitted for the record (see Table 1 below), the application and notices of public hearings relative thereto, the minutes of public meetings and hearings, and all other written

submissions received in the course of the proceedings are hereby incorporated into the record by reference.

TABLE 1: Materials Submitted for the Record	
Materials from Cape Cod Commission	***Date Sent***
Email, Andrea Adams (AA) to Tom Fudala (TF): Withdrawal of project	3/17/11
Email, AA to Fords: Withdrawal and re-referral of project	3/17/11
Certified Letter, AA to Joel G. Crowell: DRI referral received	3/22/11
Email, AA to J. Ford: Referral of project to Commission	3/23/11
Email, AA to Fords: Referral of project and DRI timelines	4/26/11
Letter, from GH, Clerk to Attorney Ford: Noticing	4/29/11
Letter, AA to Attorney Ford: No application filed; timeline for hearing	5/5/11
Hearing Notice (Open Hearing Procedurally)	5/19/11
Minutes – Hearing Officer	5/19/11
Email, Phil Dascombe: Application completeness	5/27/11
Email, Andy Walsh: Application completeness	5/31/11
Email, Ryan Christenberry: Application completeness	5/31/11
Email, Paul Ruchinskas: Application completeness	6/3/11
Email, Heather McElroy (HM): Application completeness	6/6/11
Email, Scott Michaud (SM): Application completeness	6/6/11
Email, Leslie Richardson: Application completeness	6/7/11
Letter, AA to Attorney Ford: Application not complete	6/8/11
Email, AA to Attorney Ford: Copy of letter that application not complete	6/9/11
Email, AA to Fords: Follow up to letter of 6/8/11; timeline	6/15/11
Email, AA to Attorney Ford: Commission review of future development on the site, project issues, and scheduling of a hearing	7/12/11
Email, AA to Attorney Ford and Commission staff: Water Resources	7/12/11
Email, AA to Attorney Ford: Transmission of Email from SM	7/12/11
Email, AA to Attorney Ford: Copies of prior Emails	7/12/11
Email, AA to Attorney Ford and Commission staff: Follow up on Emails about Commission review, application completeness, hearing dates	7/14/11
Email, Andrea Adams (AA) to Commission staff: Comments on project	7/19/11
Email, AA to Jessica Wielgus, Kristy Senatori (KS), and SM: Letter from Attorney J. Ford	7/19/11
Email, AA to Attorney Ford: Fee payment needed	7/19/11
Email, AA to Commission staff: Scheduling hearing	7/21/11
Email, AA to TF: Consistency of project w/local criteria of DRI approval	7/22/11
Email, AA to Linda Wicks, Mashpee Senior Center: Hearing location	7/22/11
Letter, GH, Clerk, to Attorney Ford: Noticing	7/25/11
Email, AA to Fords: Noticing hearing and site visit	7/25/11
Email, AA to Fords: Site visit and hearing location at Senior Center	7/27/11
Email, AA to Attorney Ford: Copies of Application materials	8/1/11
Email, AA to Attorney Ford: Subcommittee members, copies	8/2/11
Email, KS to Attorney Ford: Draft staff report on Water Resources	8/3/11
Memo, AA to Subcommittee: Staff report and other material	8/4/11

Email, SM to Attorney Ford: Water Resources mitigation estimates	8/8/11
Email, SM to KS: Draft Water Resources staff report	8/8/11
Email, AA to Attorney Ford: Update on hearing and staff report	8/8/11
Staff Report	8/8/11
Email, AA to Attorney Ford: PDF of Staff Report	8/8/11
Email, AA to Subcommittee: PDF of Staff Report	8/8/11
Email, AA to Commission staff: Copy of Staff Report	8/8/11
Hearing Notice	8/11/11
Hearing Sign In Sheet	8/11/11
Hearing Outline	8/11/11
Power Point Slides of Staff Report and Presentation at Hearing	8/11/11
Letter, AA to Attorney Ford: Application complete	8/11/11
Minutes from Subcommittee Public Hearing	8/11/11
Email, GH to Deborah Dami, Mashpee Town Clerk: Hearing Notice	8/12/11
Email, SM to Attorney Ford: Water Resources issues for Subcommittee's consideration	8/12/11
Email, AA to Attorney Ford: Closing Hearing and record	8/15/11
Email, SM to AA: Second copy of Water Resources issues for Subcommittee to discuss	8/15/11
Email, AA to Raul Lizardi-Rivera and Attorney Ford: Confirm receipt of Email and two attachments	8/16/11
Email, AA to Raul Lizardi-Rivera: Confirm receipt of two Emails and attachments	8/16/11
Memo and Email, Glenn Cannon (GC) to AA: Transportation comments	8/16/11
Email, AA to Brian Madden: Confirm receipt of Email and 3 attachmts	8/16/11
Hearing Notice (Close Hearing and Record Procedurally)	8/16/11
Minutes – Hearing Officer	8/16/11
Minutes – Hearing Officer	8/16/11
Email, AA to Andrew Marks: Request letter from Water District	8/23/11
Email, SM to AA: Copy of earlier Emails on Water Resources issues	8/24/11
Email, AA to Attorney Ford and Commission staff: Draft summary of Staff Report and copy of GC 8/16/11 Memo	8/30/11
Email, GC to AA: Transportation issues: trip reduction and congestion management calculations	9/7/11
Email, AA to Attorney Ford: Copy of 8/23/11 Email sent to Mr. Marks	9/7/11
Email, AA to Attorney Ford: Water Resources not resolved	9/19/11
Email, SM to AA: Copy of earlier Emails on Water Resources	9/21/11
Email, AA to Attorney Ford: PDF of draft Water Resources findings and proposed conditions; Need to discuss Transportation issues	9/22/11
Email, AA to Attorney Ford: Subcommittee meeting on 10/13/11 dependent on resolution of issues	9/28/11
Email, AA to Attorney Ford: Matthew Kealey has not contacted GC	9/29/11
Email, AA to Attorney Ford: Request for update on next steps	10/11/11
Email, AA to Attorney Ford: Request for update on next steps	10/17/11
Certified Letter, AA to Attorney Ford: Need for another Extension Agreement or withdrawal of project	10/18/11
Email, AA to Attorney Ford: PDF copy of 10/18/11 Certified Letter	10/18/11
Email, AA to Attorney Ford: Update on DRI timeline	10/20/11

Email, AA to Attorney Ford: Need for another Extension Agreement	10/24/11
Extension Agreement to November 19, 2011 (Signed by Applicant's representative on 9/19/11)	Signed by Commission on 10/4/11
Extension Agreement to December 31, 2011 (Signed by Applicant's representative on 10/24/11)	Signed by the Commission on 11/10/11
Email, AA to SM and GC: Attorney Ford questions on mitigation	11/2/11
Email, SM to AA: Copy of earlier Email on nitrogen loading mitigation	11/2/11
Email, AA to Attorney Ford: Transmittal of prior 8/8/11 Email from SM on estimate of Water Resources/nitrogen loading mitigation	11/3/11
Email, AA to Attorney Ford: Schedule based on current Extension Agreement	11/15/11
Email, AA to Attorney Ford: Polling Subcommittee for meeting	11/17/11
Email, GC to Attorney Ford: Transportation Memo of 11/7/11 (w/attachmts)	11/18/11
Email, AA to Attorney Ford: Polling Subcommittee	11/21/11
Email, AA to Attorney Ford: Review of 11/7/11 Transportation Memo	11/21/11
Email, GC to AA: Revised summary of staff report (Transportation)	11/21/11
Email, AA to Attorney Ford: Update on project status	11/22/11
Email, AA to Commission staff: Update on project status	11/22/11
Email, AA to Attorney Ford: Copies of materials from Applicant	11/22/11
Email, GC to Attorney Ford: Feedback from Town on Transportation mitigation	11/22/11
Email, AA to Attorney Ford: Copy of draft Staff Report summary	11/22/11
Email, AA to Commission staff: Copy of Applicant's response to Staff report summary	11/23/11
Cover Memo, AA to Subcommittee: Transmittal of Applicant's materials and other materials submitted for the record for meeting on 11/29/11	11/23/11
Email, SM to AA: Changes to Staff Report summary	11/28/11
Meeting Notice	11/29/11
Sample Motions Sheet used at Subcommittee Meeting	11/29/11
Hearing Outline	11/29/11
Email, AA to Attorney Ford: Copies of Applicant information for mailing	12/1/11
Memo w/attachmts: GC to AA: Proposed Transportation conditions and supporting documentation	12/5/11
Email, AA to Attorney Ford: Seeking update on feedback from Town	12/5/11
Email, AA to Attorney Ford: Response to feedback from Town – Also seeking Town's feedback on issue of access to proposed open space area	12/5/11
Email, AA to Subcommittee: Copy of draft HDEX decision for Subcommittee meeting (2 Emails)	12/5/11
Meeting Notice	12/6/11
Subcommittee Meeting Minutes	12/6/11
Email, Heather McElroy (HM) to AA: Draft new Finding on Wetlands	12/6/11
HM to Subcommittee: Copy of page 15 of draft decision showing draft new Wildlife and Plant Habitat Finding WPHF1	12/6/11
Email, AA to Attorney Ford: Proposed changes to draft Findings and Conditions and proposed new Hazardous Waste Condition	12/6/11
Memo, HM to AA: Draft Open Space Condition	12/6/11
Memo, SM to AA: Draft new Water Resources Finding WRF17 and draft new Conditions WRPC2 and WRPC4	12/6/11
AA to Subcommittee: Copy of page 23 of draft decision showing draft new Hazardous Waste Condition HAZWFC2	12/6/11
AA to Subcommittee: Copy of page 21 of draft decision showing draft new	12/6/11

General Condition GC12	
Sample Motions Sheet used at Subcommittee Meeting	12/6/11
Meeting Outline	12/6/11
Meeting Sign In Sheet	12/6/11
Email, SM to AA: Changes to draft HDEX decision	12/6/11
Draft written HDEX decision (Used at 12/6/11 Subcommittee meeting)	12/15/11
Hearing Notice (Full Cape Cod Commission)	12/15/11
Colored Map of Hearing Location	Undated
Materials from Applicant	***Date Received***
Letter, Attorney Michael D. Ford, Esq. (Attorney Ford), dated 10/14/11: Withdrawal of preliminary subdivision plan from local review	3/11/11
Letter, Attorney Ford, dated 3/11/11: Withdrawal of preliminary subdivision plan from local review	3/11/11
Email, Jeffrey M. Ford (Attorney J. Ford), with attachments: Withdrawal of project	3/17/11
Letter, with attachments, Attorney Ford: DRI Application	5/26/11
Email, Attorney Ford: Status update on possible hearing dates	6/9/11
Letter, Attorney Ford: Fee payment and additional application material	6/15/11
Email, Attorney Ford: Questions on Commission review of project	7/12/11
Email, Attorney Ford: Letter on project (also received hard copy)	7/19/11
Email, Attorney Ford: Revised fee payment	7/19/11
Letter, Attorney Ford: Application materials: Cover letter; 4/27/11 VHB Memo from Kealey; 12/20/11 (sic) Nitrogen Loading Report; Letter from Massachusetts Historical Commission; Abutters List; Locus Map; Existing Subdivision Plan; Existing Special Permit; Existing Chapter 40(B) Permit; 40(B) Permit Extension; Proposed Subdivision Plan; Attorney Ford's 6/15/11 and 7/19/11 correspondence to Commission staff	8/3/11
Email, Raul Lizardi-Rivera: Water Resources issues	8/11/11
Email, Attorney Ford and Matthew Kealey: Transportation issues	8/11/11
Email, Attorney Ford: Transportation mitigation proposal	8/11/11
E-mail, Attorney Ford: Nitrogen loading comparison	8/11/11
Email, Attorney Ford to Applicant's Consultants: Submission of materials by Email	8/16/11
Email, with attachments, Raul Lizardi-Rivera, to AA: Copy of Water Resources and drainage information	8/16/11
Email, with attachments, Raul Lizardi-Rivera, to AA: Well survey	8/16/11
Email, with attachments, Brian Madden, to AA and HM: Natural Resources Inventory	8/16/11
Email, with attachment, Raul Lizardi-Rivera, to AA: Updated map of well survey	8/16/11
Letter with attachments, Brian Madden: Natural Resources Inventory (same as Email)	8/16/11
Email, with attachment, Raul Lizardi-Rivera, to AA: Another version of updated map of well survey with more readable map key	8/17/11
Email, Matthew Kealey to GC: Transportation information	10/27/11
Email, Attorney Ford to AA: Desire to go to full Commission on 12/15/11	11/21/11
Email, Attorney Ford to AA: Polling Subcommittee and Transportation Memo of 11/7/11 from Glenn Cannon	11/21/11
Staff Report Summary	11/21/11
Email, Attorney Ford to AA: Scheduling Subcommittee meeting	11/22/11

Email, Attorney Ford to GC: Call into Ms. Mason, Mashpee Town Administrator on Transportation mitigation	11/22/11
Email, Attorney Ford to AA: Staff report summary	11/22/11
Email, Attorney Ford: Copies of Applicant materials being hand delivered	11/23/11
Letter, with attachments: Attorney Ford: Response to August Staff report	11/23/11
Email, Attorney Ford to AA: Update on meeting with Town on Transportation mitigation	12/5/11
Materials from Public Agencies	***Date Received***
DRI Referral Form	3/21/11
Email, Tom F. Fudala, Mashpee Town Planner: Consistency with local requirements	7/22/11
Email, Andrew Marks, Operations Manager, Mashpee Water District: Concerning plans to develop project site for a well location	8/10/11
Email of Letter, Andrew Marks: Concerning plans to develop project site for a well location	9/12/11
Materials from General Public	***Date Received***
None received	NA

TESTIMONY

August 11, 2011 Subcommittee Public Hearing

Mr. Knight opened the hearing at 6:05 PM. Ms. Flynn read the Hearing Notice.

Mr. Knight explained the order of the hearing and administered an oath to those who would testify or provide testimony on the proposed project.

Using a PowerPoint presentation, Ms. Adams presented the Cape Cod Commission (Commission) staff report. Ms. Adams summarized the Commission's jurisdiction over the project under Section 3(c) of the *Enabling Regulations*. She described the criteria for a DRI approval and for consideration of a Hardship Exemption. Ms. Adams then covered the issue areas in the Regional Policy Plan (RPP).

Ms. Adams covered the standards for review and approval of DRIs. She said the Subcommittee must find that *"the probable benefit from the proposed development is greater than the probable detriment."* She said the Commission staff seeks Subcommittee's direction as to potential project benefits and/or probable detriments. She noted the 7/22/11 Email from Thomas Fudala, Town Planner which states that the proposed project was consistent with Mashpee's LCP and local zoning. She noted that with respect to the criterion regarding consistency with Districts of Critical Planning Concern (DCPC), that there were no DCPCs in Mashpee, so this criterion was not applicable to the proposed project.

Ms. Adams covered the standards for a Hardship Exemption in Section 9 of *Enabling Regulations*. She noted the Subcommittee could grant relief from compliance with RPP MPS, in whole or in part, and that Hardship Exemption relief could also be granted with appropriate conditions. She noted that the *Enabling Regulations* also state that projects should comply to the maximum extent feasible with the Minimum Performance Standards, and that any relief granted *"shall relate directly to the nature of the identified hardship and shall be the minimum necessary to address the hardship."*

Ms. Adams said that Section 9 on Hardship Exemptions also requires that the Subcommittee must find that "*a literal enforcement of the provisions of the Act would involve substantial hardship, financial or otherwise...*" and that "*desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.*" She said the burden to show that a hardship exists is on the Applicant.

Ms. Adams concluded the staff report presentation by noting that Commission staff suggested that the Applicant clarify some information. She said clarification was also needed from Mashpee Water District concerning PPWSA although the Subcommittee did have the 8/10/11 Email from Mr. Marks. On Open Space issues, Ms. Adams noted the PPWSA affects amount of required open space per MPS OS1.3. She noted a Natural Resources Inventory needed to determine compliance with MPS WET1.1, MPS WET1.2, MPS WPH1.1 and MPS OS1. She said that on solid waste management, the Applicant should quantify amount of waste to be generated by development, and provide a management plan. She said Commission staff suggests the Subcommittee should receive this information before making a determination on the project.

Ms. Adams said the hearing period and record on the project must close by August 16, 2011, and that any additional information must be submitted by August 16, 2011. Ms. Adams suggested the Subcommittee could entertain a motion to continue the hearing/record to be procedurally closed by a staff Hearing Officer on 8/16/11 at 10:00 AM at the Commission office in Barnstable. She said this would allow additional time for submission of new information. She said the Subcommittee should also discuss possible dates/times after 8/16/11 for a Subcommittee meeting to discuss the project.

Using a series of large site plans showing the current and proposed configurations of the proposed subdivision which were mounted on foamcore, Attorney Ford presented the project. He also showed a September 2007 site plan for the then-proposed Comprehensive Permit (Chapter 40B) project. He said the original proposal was to divide the site into 5 lots including two industrial lots, two commercial lots and one lot for the 40B project. He noted the zoning line on the site plans which indicated which part of the site was zoned commercial and which part was zoned industrial by the Town of Mashpee (Town). Attorney Ford said the proposed 40B project would have included five (5) buildings encompassing 120 units of housing. He said the 40B project would have been serviced by an onsite wastewater treatment plant. He said the Mashpee Zoning Board of Appeals had approved the 40B project. He said the then-owner of the site had run into financial difficulties, and the Cape Cod Cooperative Bank (Bank) became the site owner via a foreclosure in 2009. He said the Bank has sought to maximize the use of the property, but also recognized it was in a Wellhead Protection Area/Zone II. He said the Bank began discussions with the Town staff and Commission staff after becoming the site owner in 2009. He said these discussions resulted in the proposed reorganized subdivision layout which better meets the Regional Policy Plan (RPP). He acknowledged the Bank had a reduced incentive to undertake marketing of the site if there would be significant re-permitting requirements. Attorney Ford said the mitigation imposed by the RPP would make the project economically unattractive. He said the Bank had filed for consideration of a Hardship Exemption, with the possibility of waivers of the RPP requirements.

Attorney Ford focused on the revised proposed subdivision plan. He said the 40B was proposed within the area designated as a Zone II, as well as a small portion of new Lot #5 and new Lot #6. He pointed out the line of the Zone II designation on the site plan. Attorney Ford noted the

remainder of the site was designated as a Potential Public Water Supply Area (PPWSA), and drew the Subcommittee's attention to an 8/10/11 Email from Andrew Marks, Operations Manager of the Mashpee Water District with respect to the lifting of the PPWSA designation. He said the new subdivision layout was better visa vie the Zone II area. Attorney Ford said the Applicant was willing to work on a restriction on Hazardous Materials and Hazardous Wastes relative to Lot #5 and Lot #6 which were still in the Zone II area.

On Open Space issues, Attorney Ford said the proposed new subdivision provided a significant amount of protected open space. He said if the PPWSA designation was removed, the amount of required open space would drop to 21 acres, and the Applicant was proposing to set aside 26.8 acres. Based on this, Attorney Ford said the Applicant was not requesting a Hardship Exemption from the RPP Open Space requirements. He also noted the excess open space beyond what the RPP would require if the PPWSA designation was removed could be considered as a potential project benefit.

On Transportation issues, Attorney Ford acknowledged that the RPP does not allow the Subcommittee to consider the proposed revised subdivision in terms of the previously approved 40(B) in terms of receiving a formal credit when the MPS are applied. Nevertheless, he said that Mr. Kealey had conducted a comparative analysis of the expected traffic impacts, which had been submitted by an 8/11/11 Email. He drew the Subcommittee's attention to pg. 4 of the 8/11/11 Email which had a chart that showed an anticipated reduction in trips. He said the Applicant was continuing to work on this issue with Commission staff.

Attorney Ford also noted that the 8/11/11 Email included a revised open space plan, where two (2) additional development lots had been created out of part of the proposed open space area. He said this had been done relative to MPS TR2.11 which allowed Applicants to reserve additional developable land as open space to receive traffic credits. He noted these credits were shown in Table 3 of the 8/11/11 Email.

On Water Resources issues, Attorney Ford noted the Wellhead Protection Area (WHPA)/Zone II line and how it affected the site. He said that based on the Email from Mr. Marks, the Applicant believed the PPWSA designation could be lifted. He acknowledged the Mashpee River and Quashnet River marine embayments were nitrogen overloaded. He noted Mr. Lizardi-Rivera had submitted additional water quality information in an 8/11/11 Email. He noted a comparison had been done of the proposed new subdivision and the 40B project. He said the total nitrogen load was 508 kilograms per year. He said the Applicant's analysis showed there was a reduction in load between what would have been permitted as part of the prior subdivision and 40(B) project and the current proposed layout. Attorney Ford said the Applicant was seeking to address the RPP Water Resources standards and to come up with a formula and development factors for each subdivision lot. Based on this, he suggested each of the subdivision lots could be assessed a monetary contribution to address the nitrogen loading. Attorney Ford said the Applicant hoped to achieve the maximum possible compliance with the RPP requirements. He noted the project will use Low Impact Design for stormwater management, and that this should be adequately dealt with at the local level.

On Land Use issues, Attorney Ford said this was largely addressed by the discussion on preservation of open space and the revised subdivision design.

On Economic Development issues, Attorney Ford said the Applicant was requesting a Hardship Exemption from compliance with the RPP.

On Natural Resources issues, Attorney Ford said a Natural Resources Inventory was being done by Holmes & McGrath staff for submission to the Commission before the close of the record. He expressed confidence that there were no wetlands on the site, and said it was not mapped as rare species habitat by the state Natural Heritage and Endangered Species Program.

On Solid Waste Management, Attorney Ford suggested this could be addressed at the local level. As such, he said the Applicant was requesting a Hardship Exemption from compliance with the RPP.

On Energy issues, Attorney Ford acknowledged the Mashpee Stretch Code would require the buildings to be energy efficient. As such, he said the Applicant was requesting a Hardship Exemption from compliance with the RPP.

On Affordable Housing issues, Attorney Ford said the Applicant was requesting a Hardship Exemption from compliance with the RPP.

On Community Character issues, Attorney Ford said the Applicant would work with the Town on issues such as building siting and design, and as such was requesting a Hardship Exemption from compliance with the RPP.

Attorney Ford noted Mr. Fudala's Email on the project's conformance to local zoning and the Mashpee Local Comprehensive Plan.

On the issue of a Hardship Exemption, Attorney Ford noted the Bank inherited the property with permits via a foreclosure. He said the Bank was seeking a Hardship Exemption to be able to implement a better subdivision proposal. He said without the Hardship Exemption, the Commission would be holding the Bank to a vacant site, which was not realistic. He suggested the revised subdivision plan was superior to the existing plan, which had permits. He suggested the revised subdivision plan met the tests for a Hardship Exemption, in that it was a better plan that advanced the public good, and a proposal that was more compliant with the RPP.

Mr. Graham asked if the prior proposals had been subject to local and/or Cape Cod Commission review?

Attorney Senatori said the new subdivision proposal was subject to Commission review as a Development of Regional Impact.

Mr. Graham asked if the existing local permits could be acted on? Could the projects that were the subject of those permits be built? He also asked if the Bank managed other property?

Mr. Crowell said this was the only piece of property that did not contain a bank-related facility which was owned by Cape Cod Cooperative Bank. He said the Bank would not seek to develop the property as a property-management company.

Mr. Graham asked if the proposed open space area that was part of the current subdivision design would be a public park?

Mr. Crowell said no.

Attorney Ford said the open space would be kept undeveloped but would not be a public park per se. He said the Mashpee Planning Board had asked the subdivision plan to show a proposed access to the open space area for emergency access only.

Mr. Short asked if the open space area would be land-locked?

Attorney Ford said yes.

Mr. Graham asked if the proposed development on the site would be commercial or industrial in nature?

Attorney Ford said it depended on the zoning. Using the large size site plan for the proposed subdivision, he noted the zoning line which indicated that the two lots closest to Route 130 were zoned commercial, while the remaining area was zoned industrial. He suggested various uses could locate in the commercially-zone area, including a retail shop or a restaurant.

Ms. Flynn said the previously proposed 40B configuration was a concern to her, given the combination of residential units in an area also zoned industrial and commercial. She said this configuration seemed relatively unsuitable, and in comparison the revised subdivision proposal seems better.

Ms. O'Keefe said she lived down Route 130 from the site, in Sandwich. As such, she said she had the same concerns as Ms. Flynn about the mix of commercial/industrial uses and residences relative to the revised subdivision layout. She also expressed concern about traffic impacts regardless of how the site would be developed, including the proposed revised site drive layout and the way to accommodate the existing telephone pole and supporting wire that was along Route 130 in the area of the proposed new site drive. She asked Commission staff to comment on the proposed driveway design, which was a Y-shaped driveway with an island in the center to accommodate the telephone pole. She asked if the project or configuration warranted a traffic light?

Mr. Cannon said the site drive would provide separate turn lanes for exiting vehicles wanting to turn North or South on Route 130. Mr. Cannon suggested the proposed subdivision would generally not create enough traffic to warrant a signal.

Mr. Short asked when the Bank came into possession of the property?

Mr. Crowell said the Bank became the owner in 2009.

Mr. Short said the proposed open space area was land-locked. As such, he expressed concern that this area could eventually be developed. If so, it could be problematic, including because the parcel abutted the Massachusetts Military Reservation (MMR) and its airfield. He noted his familiarity with the Fort Devens reuse project, and based on this, suggested it was important that the proposed open space be subject to a Conservation Restriction, to forestall future development on it.

Attorney Ford said the Bank understood the same concerns, and as such, was willing to place a Conservation Restriction (CR) on the proposed open space area. He acknowledged that a CR can be removed from property by an act of the State Legislature, but also noted the holder of the CR, which would be the Bank, must allow it to be lifted, which he suggested would be unlikely.

He also noted that if the project was approved by the Commission, this area would be subject to the decision's requirements to remain as open space. He noted the Commission's decisions run with the land, not the owner.

Ms. Adams noted that Lot #5 and Lot #6 were affected by the Zone II area, and as such, this would have an impact on what businesses could locate on those lots relative to the use, handling, storage or generation on site of Hazardous Materials or Hazardous Wastes.

Mr. Knight asked about the PPWSA and Zone II and the effect of development on the groundwater via wastewater loading. He noted the prior 40B project was to be served by a wastewater treatment plant, where the lots in the proposed subdivision would use onsite septic systems. He noted the marine embayments were both nitrogen-sensitive. Mr. Knight noted the two lots closest to Route 130 were zoned commercial, and as such, could be the site of relatively intense development, such as by a large restaurant.

Attorney Ford said the Applicant was working with Commission staff on a formula to address this lot by lot. He noted that if the PPWSA designation was removed, the RPP nitrogen loading limit would become 5 parts per million (PPM).

Mr. Michaud directed the Subcommittee to pages 8-9 of the staff report, where a draft lot by lot mitigation formula for nitrogen loading was described. He said the Commission staff was continuing to work with the Applicant to revise this proposal. He noted the Subcommittee also needed to consider the no-net nitrogen limit as well as the PPM loading limit in its deliberations.

Mr. Short asked if the prior 40B proposal would have had a wastewater treatment plant for just the residential portion or the entire project?

Attorney Ford said the wastewater treatment plant would have serviced just the residential part of the prior 40B.

Mr. Short suggested the wastewater flow characteristics of the 40B and the current subdivision plan were significantly different.

Attorney Ford noted the nitrogen loading from the prior 40B was higher than the current project.

Mr. Michaud directed the Subcommittee's attention to MPS WR1.4 as outlined in the staff report. He noted this MPS dealt with aggregation of wastewater flows, and the Subcommittee needed to deliberate on the project's compliance with MPS WR1.4. He also noted that nearby private wells needed to be identified, so that they would not be affected by the proposed development.

Ms. Flynn asked if the Applicant would provide wastewater treatment in excess of Title 5 requirements?

Attorney Ford said the proposed project would include advanced nitrogen removal on-site septic systems. He said the flows from the revised subdivision were too small to support a wastewater treatment plant.

Mr. Graham said the revised subdivision plan was an improvement over prior layouts. He requested that the Commission staff create a list of the requirements in the RPP and staff's recommendations as to the Hardship Exemption request. He also asked that the Applicant create a list of requested RPP waivers.

Mr. Knight expressed concern that the proposed 40B project would not go forward, from the perspective of the chronic shortage of affordable housing on Cape Cod. He suggested that to be considered as a potential project benefit, then the proposed onsite open space should be publicly accessible.

Ms. Flynn said the open space area also has intrinsic value as water supply protection given that it is in the area of the Zone II. She also questioned the value of public access given the proximity to the MMR fence and surrounding land uses.

Attorney Ford said the open space would be held by the Bank as private property. As such, he expressed a concern over liability to the Bank should there be public access to the open space area.

Mr. Knight acknowledged Attorney Ford's point, but also suggested there were ways to deal with that issue.

Ms. O'Keefe said the summaries that Mr. Graham had asked for would be very helpful in weighing the Hardship Exemption request. She also expressed concern over the issue of any credit from past projects that had permits but had not as yet been developed.

Mr. Knight said the traffic impacts should be tied to the proposed development.

Attorney Ford noted the two commercial lots exist now.

Attorney Senatori noted that any future development on the project site that exceeded a DRI threshold would be subject to further Commission review.

Using the signup sheet, Mr. Austin asked for public comments. There were none.

Mr. Crowell said there had been interest expressed by developers who had contacted the Bank and wanted to go forward with the proposed 40B project. He suggested the proposed revised subdivision was a better plan in terms of the RPP requirements.

Attorney Ford said the Applicant and consultants had heard from the Subcommittee that the issues should be more easily framed, and the Applicant's proposals should be lined up with the information in the staff report.

Ms. O'Keefe asked if Mashpee had a Land Use Vision Map.

Ms. Adams said no.

Mr. Graham moved to continue the hearing and the record to August 16, 2011 at 10:00 AM at the Cape Cod Commission's office in Barnstable, MA to be procedurally closed by a Hearing Officer. Ms. Flynn seconded the motion. The Subcommittee voted unanimously for the motion.

The Subcommittee discussed preliminary dates and times for a possible Subcommittee meeting. These included September 8, 2011 at 5:00 PM and September 15, 2011. No formal vote was taken on a Subcommittee meeting date, time or place.

Mr. Short moved to adjourn. Ms. O'Keefe seconded the motion. The Subcommittee voted unanimously for the motion.

November 29, 2011 Subcommittee Meeting

Mr. Knight opened the meeting at 12:17 PM. Mr. Knight explained the meeting was being recorded and was not designed for testimony. The Commission members, staff and Applicant representatives introduced themselves.

Mr. Knight asked for a motion on the draft 8/11/11 public hearing minutes. Ms. Flynn moved to approve the draft minutes as presented. Ms. O'Keefe seconded the motion, and it was unanimously approved.

Ms. Adams presented the Commission staff update. Ms. Adams said the Commission staff had created a summary of the August staff report. She said the Applicant had also provided an 11/21/11 Memo responding to the staff report. Ms. Adams noted the Applicant has requested a Hardship Exemption (HDEX). She noted the sample Motions Sheet included the standards for a Hardship Exemption taken from Section 23 of the Commission Act and Section 9 of the *Enabling Regulations*. She noted that the Commission can condition a HDEX and can choose what, if any relief may be granted from compliance with the Act and Regional Policy Plan (RPP). She also noted that the Subcommittee was considering a request for relief from the Act and RPP for development on the subject property that was not on its own subject to Cape Cod Commission review as a Development of Regional Impact.

Ms. Adams noted that the first part of the sample Motions Sheet provided possible motions for the Subcommittee's consideration in the RPP issue areas of Economic Development, Solid Waste Management, Energy, Affordable Housing and Heritage Preservation/Community Character. She noted the motions offered were that the Applicant be granted relief from compliance with MPS ED1.3, MPS AH3.1, from MPS E1.5, and from compliance with the Regional Policy Plan's Solid Waste Management and Heritage Preservation and Community Character requirements, and a companion motion that that a literal enforcement of the provisions of the Act and Regional Policy Plan in these areas would involve substantial hardship, financial or otherwise; and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Ms. Adams said that if the Subcommittee did not believe the Applicant should be granted relief in these RPP issue areas, the sample Motions Sheet offered a third and different motion, to not grant Applicant relief from compliance with these requirements.

Mr. Knight asked for comments from the Applicant on these possible motions.

Attorney Ford said the project site was zoned industrial/commercial. He suggested the Applicant's proposal was consistent with zoning. He said the Applicant believed Mashpee's local regulations could deal with solid waste management from the subdivision such as brush or trees. He noted that Mashpee is a Green Community per the State Building Code, and suggested that development on the property would be subject to certain energy efficiency requirements. He suggested that affordable housing compliance be looked at for future

development on the property that was itself a DRI. He suggested community character was not a major issue in the Town's industrial zone.

Mr. Short asked for clarification on the applicability of any relief the Commission might grant? He asked if future development on the site would be subject to Commission review?

Ms. Adams said the Commission can condition a HDEX and can choose what, if any relief may be granted from compliance with the Act and RPP. She also noted that the Subcommittee was considering a request for relief from the Act and RPP for development on the subject property that was not on its own subject to Commission review as a Development of Regional Impact.

Ms. O'Keefe asked if the Applicant had made any changes to the proposed project since the August 2011 hearing? Ms. O'Keefe complemented Commission staff on a thorough analysis.

Attorney Ford said no, but noted that the Applicant had been in contact with Ms. Joyce Mason, Mashpee's Town Manager, for her feedback on the proposed transportation impacts. He noted that Mr. Cannon of Commission staff had also been in contact with the Town on this matter. Attorney Ford suggested that Ms. Mason wanted to seek input from members of the Board of Selectmen on the Applicant's reasoning and the matter of possibly waiving the transportation mitigation. He suggested the Subcommittee could vote to grant relief, contingent upon the Town's input.

Mr. Cannon thanked Ms. O'Keefe, and noted that it is general practice that Commission staff to seek the Town's input on such matters. He noted mitigation monies paid by Applicants as part of Commission decisions ultimately go to the Towns, so it's important to hear from the Town. He suggested the Town's response would be forthcoming early next week.

Ms. O'Keefe asked about plans for doing any housing development as part of the proposed project?

Attorney Ford said no, the residential project permitted under Chapter 40(B) would not go forward, although the permit for it was still valid until 2012. He noted the proposed open space area would be in the part of the site proposed for the 40B, and that it would be permanently protected as such.

Mr. Knight said applying some of the RPP issue areas to the project are challenging, given that the site is now undeveloped, and the nature of future development on the lots is not known at this time. He questioned whether the combined future development would have sub-DRI impacts, and what strain that development would put on the area?

Attorney Senatori said the Commission staff believed that the first five issue areas outlined in the Motions Sheet could be granted a HDEX waiver. She suggested relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. She noted the remainder of the Motions Sheet dealt with other RPP issue areas, such as Water Resources, which perhaps had larger issues for development on the site under/below a DRI threshold and therefore not independently subject to Commission review.

Ms. O'Keefe said it was important for the Subcommittee to conduct due diligence, such discussing the issues, and conducting the August site visit, so that other Commission members

could have increased confidence in the Subcommittee's recommendations on the project. Ms. O'Keefe asked what the estimated dollar figure was for mitigation relative to the various RPP issue areas?

Ms. Adams noted each DRI project was reviewed individually. She noted the staff had suggested that granting relief in certain RPP issue areas for development below a DRI threshold may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. She said the Subcommittee could also consider placing conditions on the project.

Attorney Ford said it was important to consider the site's permitting history. He noted the Bank took possession of the property through a bankruptcy. He said the Town had indicated it was not entirely satisfied with the original development proposal. He noted the Applicant had met with Commission staff to discuss an alternate approach. Attorney Ford said that in order to pursue that alternate development proposal, which he indicated would be more in conformance with the RPP, the Applicant was seeking waivers from compliance with Commission requirements because the cost of compliance would make the alternate plan not feasible. He noted the new subdivision layout would preserve open space in an area mapped as a Wellhead Protection Area.

Mr. Short said he was not troubled by granting relief in the area of Economic Development and Solid Waste management. He said he was concerned about granting relief with compliance in the RPP Energy and Affordable Housing sections, particularly since the need for affordable housing on Cape was great.

Mr. Knight noted that Mashpee is a Green Community per the State Building Code, which would make development below a DRI threshold possibly have to include some energy conservation and efficiency features in its design. He asked if the Subcommittee could require the Applicant to do different things as part of each issue area? He said he had some questions on some issues.

Ms. Flynn acknowledged Mr. Short's concerns, particularly with respect to the need for affordable housing, but also agreed with Mr. Knight, and also suggested that commercial/industrial land was not really suitable for affordable housing development.

Ms. Adams said the Subcommittee could look at each issue area in turn. Using the Motions Sheet, she directed the Subcommittee's attention to the Economic Development issue area. She described the requirements for consistency with MPS ED1.3. She said the Subcommittee could choose or could choose not to grant relief from MPS ED1.3.

Mr. Short moved that the Commission grant the Applicant relief from compliance with MPS ED1.3, and to find that a literal enforcement of the provisions of the Act and Regional Policy Plan in MPS ED1.3 would involve substantial hardship, financial or otherwise; and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Ms. O'Keefe seconded the motion and it passed unanimously.

Ms. Adams said the Applicant was seeking relief from the Solid Waste section of the RPP. She noted that solid wastes from the subdivision construction would be land-clearing wastes. She also said some construction and demolition debris would result from future

construction/building on the cleared lots. She said the Applicant has stated that the Town regulations can handle management of these wastes, including after future building construction is completed. She noted that the Subcommittee could choose or not choose to grant relief.

Mr. Knight said the Commission should also acknowledge that this is based in part on the Town's regulations can handle management of these wastes, including after future building on the property.

Mr. Short asked if staff were comfortable with Mashpee's requirements?

Ms. Adams said she had not studied Mashpee's solid waste management requirements in detail, but suggested that the Town, as well as private facilities, would have a load inspection program at the Transfer Station. She also suggested brush and land clearing debris would go to a separate facility that handled this kind of waste, and as such, it was relatively unlikely that land clearing wastes would be sent to the Town's Transfer Station.

Mr. Short moved that based on Mashpee's solid waste management requirements, the Commission grant the Applicant relief from compliance with compliance with the Regional Policy Plan's Solid Waste Management requirements, and that a literal enforcement of the provisions of the Act and Regional Policy Plan in this area would involve substantial hardship, financial or otherwise; and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Ms. O'Keefe seconded the motion, and it passed unanimously.

Ms. Adams noted the next issue area for the Subcommittee's consideration was Energy. She reviewed the requirements of MPS E1.5 for the project. She noted Mashpee was a Green Community per the State Building Code, which would make development below a DRI threshold possibly have to include some energy conservation and efficiency features in its design.

Mr. Short moved that the Commission grant the Applicant relief from compliance with compliance with MPS E1.5, and that a literal enforcement of the provisions of the Act and Regional Policy Plan MPS E1.5 would involve substantial hardship, financial or otherwise; and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Ms. O'Keefe seconded the motion, and it passed unanimously.

Ms. Adams noted that MPS AH3.1 was the standard that required mitigation for commercial projects. She suggested it was not entirely clear what the cash mitigation might be, as the ultimate development scenario was not known.

Mr. Knight said he was particularly concerned about the loss of possible affordable housing since the originally proposed 40B project was not going forward. He asked if the Applicant would make a contribution to affordable housing?

Attorney Ford said the Applicant was seeking a waiver of MPS AH3.1. He suggested Commission staff had indicated that for development below a DRI threshold, that relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

Mr. Knight noted the project would not include any affordable housing component.

Ms. Adams noted that the Commission provides comments to local boards with respect to 40B projects, but that they are not automatically subject to Commission review.

Ms. O'Keefe acknowledged Mr. Knight's concerns, but said she agreed with Ms. Flynn that the site was not really suitable for residential development.

Attorney Ford suggested that the Applicant looked at the potential development on the site with fresh eyes. He suggested the Mashpee Planning Board was not concerned that the proposed 40B would not go forward. He noted there were several other 40B projects still pending in the area, but not yet built.

Mr. Knight asked for clarification about the applicability of MPS AH3.1 per affordable housing? Is this a standard that can be waived in total, or should the Applicant make some contribution to affordable housing, as allowed per Section 23 of the Act and Section 9 of the *Enabling Regulations*.

Attorney Senatori said that for development that triggered a DRI threshold, and/or was otherwise subject to Commission review, the Commission could decide at that time if MPS AH3.1 was applicable to the development or not. She noted the Applicant was proposing to protect the area of the 40B as permanent open space.

Ms. Flynn said the Subcommittee did not yet know the ultimate development potential of the lots, because no development was proposed at this time. She said waiving compliance with MPS AH3.1 for proposed development that does not independently trigger Commission review was appropriate.

Ms. Adams suggested a single owner might purchase the property, which would result in a different development scenario that might again be subject to Commission review.

Ms. O'Keefe asked for clarification where the open space area would be?

Ms. Adams said yes, the Applicant was proposing to protect a portion of the site in perpetuity as open space, towards the back of the site.

Ms. Flynn moved to grant the Applicant relief from compliance with MPS AH3.1, and to find that a literal enforcement of the provisions of the Act and Regional Policy Plan in MPS AH3.1 would involve substantial hardship, financial or otherwise; and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Mr. Short seconded the motion, and it passed unanimously.

Ms. Adams said the final of the first five RPP issue areas was Heritage Preservation/Community Character, which included issues of impacts to historic structures, impacts to archeological sites, site design, building design, exterior lighting, and landscaping. Ms. Adams said the Commission had received a letter from the Massachusetts Historical Commission stating the project was unlikely to impact archeological sites. She said that it was not certain how these

would be addressed because the development potential was not known. At the same time, she said Commission staff acknowledged the area was a commercial/industrial area.

Mr. Short moved to grant the Applicant relief from compliance with the Regional Policy Plan's Heritage Preservation and Community Character requirements, and to find that a literal enforcement of the provisions of the Act and Regional Policy Plan in these areas would involve substantial hardship, financial or otherwise; and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Ms. Flynn seconded the motion, and it passed unanimously.

The Subcommittee took up discussion of compliance with the applicable Transportation Minimum Performance Standards (MPS).

Ms. Adams said the MPS that needed more Subcommittee discussion in terms of Hardship relief were MPS TR2.1 and MPS TR3.4. She noted the Applicant has asked that credits be allowed from proposed 40B project, but that MPS TR0.2 does not allow traffic credit for the proposed 40B project in part because it does not actually exist. She noted that as part of the 11/7/11 Memo from Mr. Cannon, Commission transportation staff calculated the traffic mitigation for the trip reduction requirements of MPS TR2.1 at $1,001,400. She also noted there was no concern about safety impacts in the study area.

Mr. Cannon said he had discussed the applicable MPS with Ms. Mason, and suggested that the Town was less concerned about compliance with MPS TR2.1. He said the trip reduction mitigation number is generally smaller for DRIs, based on additional information such as a trip reduction plan, or via a donation of vacant, developable land. He said staff felt more comfortable moving forward without Town input on this MPS.

Ms. Adams noted this MPS is for trip reduction, which other DRIs have addressed through a trip reduction program. She said it is not possible for the Applicant to do this in this case, as the actual development scenario is not known.

Mr. Knight asked if the Town could require mitigation of the Applicant?

Mr. Cannon said the Town doesn't have the ability to require off-site mitigation in the way the Commission can, but it can certainly negotiate with the Applicant on their own. He said the Town Administrator seemed to be more focused on compliance with MPS TR3.4.

Mr. Short moved to grant the Applicant relief from compliance with MPS TR2.1 and to find that a literal enforcement of the provisions of the Act and MPS TR2.1 of the Regional Policy Plan would involve substantial financial hardship, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Ms. Flynn seconded the motion, and it passed unanimously.

Ms. Adams said the second MPS, MPS TR3.4 addressed congestion on roadways. She said the anticipated Applicant's fair share of the congestion mitigation cost was $427,534.

Mr. Knight asked if the Town had any comments on this?

Mr. Cannon asked if the Applicant had a recommendation on this, as this issue seemed to be important to Mashpee?

Attorney Ford suggested the Subcommittee could conditionally grant the Applicant relief from compliance with MPS TR3.4 pending input from the Town. He noted the 40B still had a valid permit until early 2012. He said the Applicant had also laid out a 13-lot subdivision idea, and was voluntarily reducing it to only 11 lots.

Ms. Adams said it was unclear what the Town's response might be, as to whether the Commission should possibly grant the Applicant full relief from MPS TR3.4 or something less than full relief, which would impact the amount of potential congestion mitigation monies.

Attorney Ford said the Town would provide a recommendation. He said the Commission should consider the 40B.

Attorney Senatori said it was important to have the Town's input.

Mr. Knight said the motion should take into account that input from the Town was important.

Ms. Adams suggested that based on the preceding discussion, the Subcommittee could consider a motion which granted the Applicant relief from compliance with MPS TR3.4 subject to an official, direct response from the Town of Mashpee concerning compliance with MPS TR3.4. She said if this was acceptable, the Subcommittee could also move to find that a literal enforcement of the provisions of the Act and MPS TR3.4 of the Regional Policy Plan would involve substantial financial hardship, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Ms. Adams suggested that if the Subcommittee chose not to grant relief from MPS TR3.4, the need for a response from the Town was mooted.

Ms. Flynn and Ms. O'Keefe said the Town's response needed to be an official response; from someone empowered to speak for the Town.

Mr. Knight said it would be very important for the Town to provide the input before the Subcommittee met again to review the draft decision. He said what would happen if the Town did not provide that input?

Ms. Adams said the Subcommittee could revisit this issue and its vote if the Town did not provide input on this matter.

Attorney Senatori said the Subcommittee would have an opportunity to review a draft decision, should it choose to direct staff to create a draft decision today. She said the Subcommittee should get the feedback before 12/15/11, when the project was scheduled for a final vote before the full Commission.

Attorney Ford said he and the Applicant understood it was important to get the Town's input on this matter.

Ms. Flynn moved granted the Applicant relief from compliance with MPS TR3.4 subject to an official, direct response from the Town of Mashpee concerning compliance with MPS TR3.4 and to find that a literal enforcement of the provisions of the Act and MPS TR3.4 of the Regional Policy Plan would involve substantial financial hardship, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially

derogating from the intent or purpose of the Act. Mr. Short seconded the motion and it passed unanimously.

Ms. Adams said the next RPP issue area for the Subcommittee's consideration was Water Resources. She directed the Subcommittee's attention to the draft Motions Sheet. She said the first issue for the Subcommittee's consideration addressed the Potential Public Water Supply Area (PPWSA) designation on part of the site. She said the Regional Policy Plan allows Commission to determine that MPS WR2.5 and MPS WR2.6 do not apply provided supporting information from the Town or Water District demonstrates that the area will not be considered as potential water supply areas. She noted that Andrew Marks, Operations Manager, Mashpee Water District had submitted an Email for the record stating the District did not have plans to use the site for a well, and that if the Subcommittee finds this testimony persuasive, then the Subcommittee may determine that MPS WR2.5 and MPS WR2.6 does not apply to the PPWSA.

Mr. Knight noted that water resources protections were critical to the Cape, and asked for the staff's and Subcommittee's determination on Mr. Marks' Email?

Mr. Michaud said the requirements in question were meant to limit development in areas suitable for a well site that would allow a specific radius around that well. He said applying the 1 part per million nitrogen MPS to the site would very significantly limit development on the site.

Ms. Flynn moved to find that the 8/10/11 Email from Mr. Marks, Operations Manager, Mashpee Water District is persuasive and that it meets the intent of allowing the Commission to waive compliance with MPS WR2.5 and MPS WR2.6 for the PPWSA. Mr. Short seconded the motion and it passed unanimously.

Ms. Adams said the next issue in Water Resources for the Subcommittee's consideration addressed part of MPS WR1.2. She said the intent of MPS WR1.2 is to protect drinking water wells on abutting properties from contamination by septic systems and other contamination sources. She said to comply with MPS WR1.2; Applicants must identify public/private wells within 400 feet of site and also located septic systems and other contamination in a manner to avoid adverse impacts to wells. She noted the Applicant has identified private wells on adjacent properties, and that as such, staff suggests the Applicant has partially complied with MPS WR1.2. She said that staff suggests that septic systems could be sited on lots so that private wells are not impacted. Ms. Adams said the Subcommittee must still determine if Hardship relief should be granted from compliance with this MPS.

Mr. Michaud said the Applicant has partially complied with MPS WR1.2 by locating nearby wells. He said the Commission has information on record that indicates where the adjacent private wells are located. He said the information on groundwater flow in the area indicates that septic systems for future development on the site could be located in a way so that the private wells are not impacted. Mr. Michaud also noted the Mashpee Board of Health regulations are adequate to address this issue.

Ms. Flynn noted the Mashpee Board of Health had to approval septic systems.

Mr. Short moved to grant the Applicant relief from compliance with MPS WR1.2 and to find that a literal enforcement of the provisions of the Act and MPS WR1.2 would involve substantial hardship, financial or otherwise; and that desirable relief may be granted without substantial

detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Ms. Flynn seconded the motion, and it passed unanimously.

Ms. Adams said the next item was to make sure all of the applicable MPS were addressed. She noted that MPS WR1.3 addresses project connection to public water supply in cases where water withdrawals reach 20,000 gallons per day. She noted that staff suggests that MPS WR1.3 would not apply to the project, and as such, no relief needed.

Ms. Adams noted that MPS WR1.4 requires all commercial subdivisions of land shall cluster the proposed development unless inconsistent with local bylaws. She said the MPS also requires that cluster plans shall employ shared wastewater treatment, community water supply alternatives and Low Impact Development landscaping to allow more compact development. Ms. Adams noted the proposed project does not provide for shared wastewater infrastructure as required by MPS WR1.4. She said as such, the Applicant is seeking relief from MPS WR1.4 relative to the provision for shared wastewater infrastructure. Ms. Adams also noted the project would be connected to public water supply. Ms. Adams said MPS WR1.4 was also related to MPS WR1.2 concerning PPWSAs. She said that because the Applicant has identified private wells, the Subcommittee could make a determination that MPS WR1.4 could be waived.

Mr. Short moved to I move to grant the Applicant relief from compliance with MPS WR1.4, and to find that a literal enforcement of the provisions of the Act and MPS WR1.4 would involve substantial hardship, financial or otherwise; and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Ms. O'Keefe seconded the motion.

Mr. Knight asked about how landscaping would be irrigated? Would there be an on-site well for irrigation purposes? Is use of Town water allowed for irrigation of landscaping?

Mr. Michaud agreed with Attorney Ford. He noted an onsite well for irrigation was not part of the proposal.

Attorney Ford said Mashpee does not allow use of public drinking water to irrigate landscaping. He suggested landscaping would be watered manually, by hand or by water trucks or both.

Mr. Michaud said the Applicant did not seek relief from MPS WR1.5 which addresses a turf and landscape management plan, and encourages use of native, drought tolerant, pest-resistant plant species.

Mr. Knight asked for a vote on the motion concerning MPS WR1.4, and it passed unanimously.

Mr. Knight asked for a discussion on MPS WR1.5 concerning landscaping.

Attorney Ford suggested that any landscaping would meet these requirements, as Mashpee also requires native, drought-tolerant and pest-resistant plantings.

Mr. Michaud suggested staff would be seeking to verify the types of plantings and compliance with MPS WR1.5 if applied to future development on the site.

Mr. Knight suggested compliance with MPS WR1.5 be made a condition of approval.

Attorney Ford agreed with this, and suggested submission of a landscaping plan be tied to issuance of a Building Permit.

Ms. Adams said the next issue was Section WR3 of the RPP. She said this section of the RPP seeks to preserve and restore the ecological integrity of marine water embayments and estuaries. Ms. Adams said the nitrogen loading requirements of MPS WR3.1 and MPS WR3.2 may be achieved by providing wastewater treatment for the development or redevelopment and additional treatment capacity for nearby land uses, installation of alternative denitrifying technologies for existing septic systems in the same Marine Water Recharge Area, and/or an equivalent contribution of $1,550 per kg/yr of nitrogen towards a municipal or watershed effort. Ms. Adams said the project is located in two watersheds: Quashnet River and Mashpee River. She said the critical nitrogen load is known for the Mashpee River but not for the Quashnet River, and that both embayments are nitrogen overloaded and both are subject to nitrogen limits. Ms. Adams said the project is entitled to a Fair Share nitrogen credit of $55,056 which is applicable to the Mashpee River watershed based on the size of the parcel and the critical nitrogen load developed for the Mashpee River watershed. Ms. Adams said staff suggests future could be conditioned to meet MPS WR3.4.

Mr. Michaud said the Fair Share credit reduces the dollar value of $1,550 per kg/year. He said that number would be applied to future development's impact. He said staff suggests the monetary offset be determined when actual development on the lots is known.

Ms. Adams said this was outlined in more detail in the August staff report. She noted the Applicant has reviewed staff's estimates of the Fair Share for possible development scenarios.

Attorney Ford agreed with staff's analysis that the assessment under MPS WR3.4 would be made at the time of a Building Permit for development.

Mr. Knight asked for clarification regarding the proposed motions.

Ms. Adams said that if the Subcommittee believed future development should be required to make a Fair Share contribution towards addressing the nitrogen loading, the Subcommittee could choose not to grant relief. She said if this was the Subcommittee's choice, the staff would present the Subcommittee draft Findings and Conditions that would implement the Subcommittee's determination.

Ms. O'Keefe asked about whether the mechanics of how compliance with MPS WR3.4 needed to be included in the motion?

Ms. Adams suggested that it was not necessary to include this level of detail in the motion.

Ms. Flynn moved to not grant the Applicant relief from compliance with MPS WR3.4. Ms. O'Keefe seconded the motion, and it passed unanimously.

Ms. Adams said the next Water Resources issue area addressed stormwater management. She said the Applicant proposes to employ low-impact landscaping and stormwater designs to manage runoff from the proposed access road. Ms. Adams noted, however, that the Applicant is seeking relief from Section WR7, and that Commission staff is unable to determine if the project will meet MPS in Section WR7 of the RPP because definitive development plans have not been provided for the ultimate development on each of the lots. With respect to the subdivision road,

Ms. Adams said the Mashpee zoning bylaw requires low-impact stormwater designs to manage runoff, and that the Applicant has submitted a stormwater drainage plan for the road which generally complies with the standards in Section WR7. She said staff suggests that stormwater designs associated with subsequent development on the project site could be made to comply with MPS in Section WR7 as a condition of project approval.
Ms. Flynn noted the State has certain stormwater management requirements for roads.

Attorney Ford said Mashpee also has specific requirements concerning management of stormwater road runoff. He suggested that Mashpee's requirements could deal with this.

Mr. Michaud said there are three stormwater management MPS in the RPP. He said these are MPS 7.9, MPS 7.10, and MPS 7.11. He said the important components deal with design and a post installation certification. Mr. Michaud noted another MPS required a shut-off valve between sources of contamination and the drainage structures. He said compliance with MPS WR7.11 was particularly important for Lot 5 and Lot 6 since they were located in a Wellhead Protection District.

Mr. Short asked about the estimated timeframe for roadway completion?

Attorney Ford suggested this would be done first.

Mr. Knight said staff suggested that relief not be granted with respect to road runoff.

Mr. Michaud suggested compliance with these requirements would not be onerous. He said the requirements would be related to erosion controls and the post-installation inspection. He suggested the Subcommittee not grant relief, but adjust the applicability of the standards.

Ms. O'Keefe asked for clarification.

Mr. Knight suggested that staff was suggesting that limited relief be granted, or granted with conditions.

Mr. Michaud said the Commission should place conditions on the project, and compliance would not be onerous.

Attorney Senatori suggested the Subcommittee could place conditions on the project and future development.

Mr. Knight suggested that compliance could be determined as each lot was developed.

Mr. Michaud said staff could provide the Subcommittee with suggested language for the conditions at their next meeting.

Ms. Flynn moved to grant the Applicant partial relief from compliance with Section WR7 of the Regional Policy Plan, with conditions, and moved to find that a literal enforcement of the provisions of the Act and Section WR7 of the Regional Policy Plan would involve substantial hardship, financial or otherwise; and that desirable partial relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act. Mr. Short seconded the motion and it was unanimously approved.

Attorney Ford said the Applicant was not seeking relief from the RPP Open Space requirements.

Mr. Knight said he had questions on this issue.

Ms. Adams said Applicant may be seeking relief from the Open Space requirements. She said the site is mapped as Significant Natural Resources Area (SNRA) by the RPP maps. She said in SNRA areas, the open space requirement for this project is 42.4 acres. Ms. Adams noted the site is mapped SNRA due to the presence of a PPWSA. At the same time, Ms. Adams noted the Subcommittee had found the 8/10/11 Email from Andrew Marks, Operations Manager of Mashpee Water District indicating that the District is not interested in developing a water supply on this parcel to be persuasive. As such, she said the Applicant is therefore eligible for application of the provision in MPS OS1.3 which allows removal of the SNRA designation for the calculation of the open space requirement. Based on the removal of the SNRA designation, the Open space requirement reduced to 21.2 acres, and the Applicant's Open Space proposal is for 26.8 acres. Ms. Adams said therefore, if SNRA/PPWSA designation removed, no relief from MPS OS1.3 is needed.

Mr. Knight asked about public access to the open space area? He said open space without public access seems to be of a lesser value. He said he understood the Applicant's concerns about liability if there is public access. He suggested this could be worked out with the Grantee for the open space.

Attorney Ford said public access does present liability issues. He said public access is not specifically required. He said the Applicant would talk to the ultimate holder of the restriction, and to the Town of guidance. He acknowledged the Fire Department might want emergency access.

Mr. Ford asked if the staff had received comments from the Town on this? He said public access to permanently protected open space is a key. He said the kind of access he was talking about would be passive use.

Ms. Flynn expressed concern about the nearness of the open space area to the Massachusetts Military Reservation and airstrip.

Mr. Crowell asked for clarification on the type of public access?

Mr. Knight suggested it would be passive, not something such as ball fields. He asked if the land under open space restriction would come off the Town's tax rolls>

Attorney Ford said the land permanently restricted as open space would have a reduced value.

Mr. Crowell gave an example of a piece of land protected as open space in Sandwich that had its tax value reduced to 1/26th of its normal value for tax valuation. He acknowledged however that each case was unique.

Attorney Senatori said this could be discussed with the Town, and suggested the Subcommittee could conditionally vote based on the Town's input, that public access to the open space be considered in conjunction with the Town.

Ms. Flynn said it is possible that public access was not a good idea, and as such, getting input on public access to the open space was a good idea.

Ms. O'Keefe said she agreed with Ms. Flynn. Getting Town input is a good idea.

Ms. Adams noted a Natural Resources Inventory (NRI) is required per MPS WPH1.1. She said the Applicant submitted an NRI on 8/16/11, which complies with the requirements of MPS WPH1.1, and therefore there is need to redesign the project. She said the staff believes the project appears to be consistent with the Wildlife and Plant Habitat MPS, and as such, suggests that no relief needed in this RPP section.

Ms. Adams said that RPP issues that were inadvertently left off the sample Motions Sheet addressed the RPP Hazardous Materials and Hazardous Waste standards. She said these requirements related most directly to Lot 5 and Lot 6. She said the staff did not suggest granting relief from compliance with MPS WM1.1, MPS WR2.2 and MPS WM1.5 for all future development on Lot 5 and Lot 6.

Ms. O'Keefe moved to not grant the Applicant relief from compliance with MPS WM1.1, MPS WR2.2 and MPS WM1.5 for all future development on Lot 5 and Lot 6, and to place conditions on the project. Mr. Short seconded the motion, and it passed unanimously.

The Subcommittee discussed possible dates/times for another Subcommittee meeting.

Ms. O'Keefe said she believed that the Subcommittee had anticipated questions that might arise at the full Commission meeting.

Ms. O'Keefe moved to hold a Subcommittee meeting on Tuesday, December 6, 2011 at 11:00 AM at the Commission's office. Mr. Short seconded the motion, and it passed unanimously.

Attorney Senatori said its best that the Subcommittee has as many members as possible.

Ms. O'Keefe moved direct staff to draft a written decision, approving the project as a Hardship Exemption, with conditions. Mr. Short seconded the motion, and it passed unanimously.

Mr. Short moved to adjourn. Ms. O'Keefe seconded the motion. The Subcommittee voted unanimously for the motion. Adjourned at 2:05 PM.

December 6, 2011 Subcommittee Meeting

Mr. Knight, Subcommittee Chair, opened the Subcommittee meeting at 11:00 AM. He introduced himself, and the other Subcommittee members introduced themselves. He noted meetings were not designed for testimony and that the meeting was being recorded. He asked Commission staff to provide an update.

Ms. Adams, Senior Regulatory Planner said the Subcommittee had been provided by Email with a draft written HDEX decision. She also noted that a Meeting Outline and Sample Motions sheets had also been distributed to the Subcommittee and the draft Minutes of the 11/19/11 Subcommittee meeting. She suggested the Subcommittee review the draft decision page by page. Ms. Adams noted the recording information, project description and decision summary. She noted the draft decision included the testimony to date, which would be updated upon approval of the draft Minutes, and that a table of *Materials Submitted for the Record* would

also be included in the decision. Ms. Adams noted the draft Findings. She noted the General Findings, Land Use and Economic Development Findings on pages 9-10. She asked for questions or corrections?

Mr. Knight suggested the Subcommittee try to approve the 11/29/11 draft Minutes, given that the 12/15/11 Commission Agenda was quite lengthy.

Ms. Adams noted that General Finding 10 addressed the project's probable benefits and detriments.

Mr. Knight suggested the Subcommittee could address the project's probable benefits and detriments at the end of review of the draft decision.

Ms. Adams continued to review the draft decision, noting the draft Water Resources Findings, and that Mr. Michaud was available to answer questions. She also noted that the Subcommittee had granted relief from compliance with MPS WR1.2 at the 11/29/11 meeting, but in fact, the Applicant had complied with this MPS so that no relief was needed. She directed the Subcommittee to the 12/6/11 Motions Sheet on this issue.

Mr. Michaud noted the key part of MPS WR1.4 is related to wastewater infrastructure. He noted the private wells were not located down-gradient, and as such, would not be impacted by septic systems on the project property.

The Subcommittee and staff continued to review the draft Water Resources Findings.

Attorney Ford suggested that draft Finding WR10 as written was not accurate, in that only parts of proposed new Lot 5 and Lot 6 were located in the Wellhead Protection Area. He noted this was acknowledged in Finding Hazardous Waste 2 (HAZWF2). He suggested the draft Finding WR10 mirror the language of HAZWF2. He used a set of large sized site plans and pointed out on one of them a line which indicated the location of the Wellhead Protection Area (WHPA) as it related to new Lot 5 and new Lot 6. He said there was approximately 59,000 square feet of Lot 5 that is not in a WHPA and 76,800 square feet of Lot 6 that was also not in the WHPA. Attorney Ford suggested the Finding should be amended. He noted the minimum lot size in this area of Mashpee was 40,000 square feet, such that development could be sited on these lots and not be in the WHPA.

Mr. Michaud said Commission staff's newer language related to stormwater runoff controls at a loading dock or vehicle maintenance area to require future development on Lot 5 or Lot 6 to meet this standard when development is proposed. He suggested the type of use on the lots would not be restricted.

Ms. Adams acknowledged the language of Finding HAZWF2 and suggested the draft Finding WR10 could be adjusted accordingly. She suggested, however, determining in the field where the WHPA line exactly was could be challenging.

Attorney Ford said he was comfortable with the suggested change to WRF10.

Ms. O'Keefe asked about runoff controls?

Mr. Michaud said there were two standards related to development in Wellhead Protection

Areas. He said the first was that development in WHPA was limited to Household Quantities of Hazardous Materials and Wastes. He said the other standard relates to stormwater management and requires a shutoff between the loading dock and the outflow of the stormwater management system, so as to attempt to catch releases of Hazardous Materials or Wastes before it flows into the catch basins. He said one was a quantity limit, and one was a structural requirement.

Mr. Short moved that draft WRF10 be amended to reflect the same language as draft HWF2 concerning Lot 5 and Lot 6 and the WHPA. Ms. Flynn seconded the motion, and it was approved unanimously.

The Subcommittee and staff continued to review the draft Water Resources Findings.

Attorney Ford said he had the same issue with draft WRF12, concerning Lot 5 and Lot 6 and the WHPA location. He said only parts of these lots were subject to MPS WR2.2.

Ms. Adams suggested that WRF10 acknowledges the WPHA line as shown on the site plans. Ms. Adams expressed concern about how this would be implemented in the field, particularly when development on Lot 5 and Lot 6 occurred. She expressed concern that in the case of a building, which might attempt to straddle the WHPA line, assuming that it could be marked in the field, and that the occupant of such a building could theoretically be limited in terms of Hazardous Materials and Waste in one part of the building and not the other. She noted that the intent of MPS WR2.2 is to protect groundwater from contamination, and as such, she suggested that MPS WR2.2 which limited the amount of Hazardous Materials and Wastes be applied to all of Lot 5 and Lot 6. She suggested applying the limit on Hazardous Materials and Wastes to all of both lots would not unduly disadvantage the Applicant in marketing the project or unduly limit development on these lots.

Attorney Ford said the subdivision had been laid out to have portions of Lot 5 and Lot 6 that were outside of the Wellhead Protection Area. He also noted these areas outside the WHPA exceed the minimum lot size. He suggested the WHPA line could be demarcated in the field, based on a conversation with the Applicant's engineer. He suggested applying MPS WR2.2 to all of the lots was not fair or accurate. Attorney Ford said the Applicant's engineers could demarcate the WHPA line with a fence.

Mr. Short asked for further clarification from staff on the issue.

Ms. Adams suggested that it would be difficult to exactly locate the WHPA line in the field. She said a concern was how this would be applied to development on the lots in the future, and suggested applying the limit on Hazardous Materials and Wastes to all of Lot 5 and Lot 6 would not be unduly burdensome to the Applicant to require that two of the 11 lots have a restriction on the amount of Hazardous Materials or Wastes. She acknowledged that it was the Subcommittee's decision.

Attorney Ford suggested the Subcommittee should apply the regulation to only a portion of the site. He suggested the WHPA line could be determined on the ground. Attorney Ford, using the large size plans, pointed out the WHPA to the Subcommittee.

Mr. Knight asked if the area that was inside the WHPA could be demarcated in the field? He suggested this would allow a buffer or setback to be created, such as in the case of work near a

wetland.

Ms. Adams suggested that containment was less protective of the resource than the quantity limit. She suggested it was the Subcommittee's decision to apply the standard.

Mr. Knight said he shared staff's concern about a building straddling the WHPA. Based on this, he asked if there was a setback articulated in the RPP?

Ms. Adams said no, the RPP did not include a specific setback relative to WHPA, but rather a prohibition above a Household Quantity.

Mr. Michaud directed the Subcommittee's attention to the italics in draft WRF12, which was the language of MPS WR2.2.

Attorney Ford suggested MPS WR2.2 only applied to a part of Lot 5 and Lot 6.

Ms. O'Keefe said she understood the concerns of staff, having been a Selectmen and been confronted with a site cleanup of hazardous wastes including dioxin. She said acknowledged that groundwater moves and that it does not respect the so-called "line." Ms. O'Keefe asked if staff's concern was over the long term?

Ms. Adams said yes, particularly with respect to how the limit would be applied to future development on Lot 5 and Lot 6 over the long term.

Ms. O'Keefe suggested the Applicant also did not want to see a business on the property that would be in direct confrontation with the groundwater, such as an autobody shop.

Attorney Ford said the Applicant acknowledged that any development in the WHPA would be subject to MPS WR2.2 limits.

Ms. O'Keefe suggested there might be a way to merge both concerns in a manner suggested by Mr. Knight, by marking the WPHA in the field. She also suggested that if the limit in MPS WR2.2 was applied to the two lots it would not be unduly burdensome to the Applicant.

Mr. Cannon asked if this had been discussed in detail with the Applicant?

Attorney Ford suggested that he had contacted staff by telephone this morning, noting that it was the Applicant's position that only parts of Lot 5 and Lot 6 were subject to MPS WR2.2.

Ms. Flynn noted the WHPA was based on a state designation. She asked if the state creates an additional buffer area around a WHPA?

Attorney Ford said no, the protection was built into the WHPA.

Ms. Adams said the Subcommittee needed to be comfortable with the issue and draft decision.

Mr. Michaud noted the restriction on Hazardous Materials and Wastes applied to development in the WHPA.

Attorney Ford suggested that Mr. Michaud was agreeing with the Applicant's analysis.

Mr. Michaud said the Subcommittee could consider applicability of MPS WR2.2 to future development. He suggested if there was no development, the standard would not apply. Mr. Michaud said there were areas of Lot 5 and Lot 6 that were not located inside the WHPA as shown on the Applicant's plans.

Ms. O'Keefe noted there was no feedback on this issue from the Town. She also suggested the Town could not necessarily impose a protection on the property to address this issue. Ms. O'Keefe suggested the Subcommittee should come to a consensus on this. She noted a particular developer of each lot could also return to the Commission and seek a determination as to whether or not their development met MPS WR2.2 on Lot 5 and Lot 6. She suggested the restriction on Hazardous Materials and Wastes would not be unduly burdensome to the Applicant.

Attorney Ford noted the lots were zoned industrial. He suggested that contractors' yards would be affected by application of MPS WR2.2 to Lot 5 and Lot 6.

Ms. O'Keefe said she understood the distinction in zoning between industrial, commercial and residential. She said some industrial uses could adhere to the limits in MPS WR2.2.

Ms. Adams said it was unclear if Mashpee had a restriction similar to MPS WR2.2 in zoning.

Attorney Senatori suggested the intent of the standard is to protect groundwater and drinking water. She noted the line is shown on the Applicant's site plans. She said these plans would be included and recorded with the Commission's decision.

Mr. Knight asked if the line could be marked in the field? He suggested this would assist future development on the two lots.

Attorney Senatori suggested a condition could be included in the draft decision that Commission staff review any proposed development plans, to ensure the development was consistent with the restriction of the WHPA.

Mr. Knight said there should be markings in the field of the WHPA. He said the decision should require Commission staff review of future development to ensure it was consistent with the WHPA.

Mr. Short agreed with Mr. Knight. He acknowledged staff's concerns about possible contamination of the drinking water. He suggested a purchaser of the property could still develop on the lots.

Ms. Adams suggested there were types of development and activities that could occur on the lots that were consistent with the WHPA such as storage of pipe or lumber. She said there is development that can occur subject to MPS WR2.2.

Ms. O'Keefe acknowledged the difficulty of "the line," and suggested the real issue was possible contamination of the groundwater. At the same time, she questioned whether there could be a buffer zone to the WHPA.

Mr. Michaud said the WHPA delineation comes from the state, and is based on an assumption

of drought conditions and 120 days of a maximum pumping rate of one or more public supply wells. As such, he acknowledged it delineates a conservative area of contribution to that/those wells. He noted, however, the delineation was an estimate of the contributing area to the well.

Mr. Knight asked for a consensus? He said there should be a field designation of the WHPA area.

Attorney Senatori suggested the Subcommittee could include a condition in the draft decision that Commission staff review and approve future development on Lot 5 and Lot 6 to ensure it was consistent with the WHPA.

Attorney Ford suggested this could be done prior to the Preliminary Certificate of Compliance for development on Lot 5 and Lot 6. He suggested the WHPA line would be put on the actual development plans. He said he also understood the Subcommittee's desire for a field delineation of the WHPA.

Ms. Adams said this could be part of a condition.

Attorney Ford asked for changes to WRF12, noting that only parts of Lot 5 and Lot 6 were in the WHPA.

Mr. Short moved that WRF12 be amended to acknowledge that only parts of proposed new Lot 5 and Lot 6 were located in the Wellhead Protection Area. Ms. Flynn seconded the motion, and it was unanimously approved.

The Subcommittee continued to review the draft decision's Water Resources findings.

Mr. Michaud noted that local zoning bylaws address the provisions that are being waive per WRF14.

Ms. Adams noted that draft Findings WRF16 and WRF17 required that the project would be conditioned to comply with certain stormwater management requirements. She distributed new proposed language for WRF17. Ms. Adams noted the new language for WRF17 was related to the stormwater shutoff valve as previously discussed by the Applicant.

Attorney Ford asked for the Finding to acknowledge that only a portion of Lot 5 and Lot 6 was in the WHPA.

Mr. Michaud said staff would look at actual development plans to determine consistency with the WHPA.

The consensus of the Subcommittee was that Finding WR17 to acknowledge that only a portion of Lot 5 and Lot 6 was in the WHPA.

The Subcommittee continued to review the draft decision.

Ms. Adams distributed another handout that provided a draft new Wildlife and Plant Habitat Finding that acknowledged that the Natural Resources Inventory found no wetlands, and the Wetland MPS do not apply.

In the Open Space RPP issue area, Ms. Adams noted the open space requirement was reduced to 21.2 acres by the lifting of the Potential Public Water Supply Area.

Mr. Knight questioned the method of open space protection, when and how it would be protected, and the issue of public access? He asked if there had been input from the Town on the issue of public access to the open space area?

Ms. Adams said Attorney Ford had received a response on the issue of public access.

Attorney Ford said the comment back from the Town was that there was no real desire for public access given the proximity to the Massachusetts Military Reservation. He noted the Town would most likely require emergency access to the open space area.

Ms. Adams acknowledged the Town had provided the input the Subcommittee had sought on the issue of public access to the open space area.

Ms. McElroy asked if the Applicant knew at this point whether the open space would be protected by deed or a Conservation Restriction?

Attorney Ford said the Applicant wanted to have both options. He also said the proposed two lots discussed during the review as part of the Transportation offsets would be in the proposed open space area.

Ms. Adams noted the next RPP issue area was Transportation. The Subcommittee continued to review this section of the draft decision. Ms. Adams noted that draft Findings with respect to the proposed congestion mitigation were based on input from the Town that the Town did not want the congestion mitigation waived as part of a Hardship Exemption. Ms. Adams directed the Subcommittee to the draft Motions Sheet, and noted there were three possible motions, two that granted relief from MPS TR3.4 and one that did not. She suggested the Applicant could also withdraw the request for relief from MPS TR3.4 which would eliminate the need for the Subcommittee to determine if relief should be granted.

Attorney Ford said the Applicant understood the Town's position, and as such, withdrew the Applicant's request for relief from MPS TR3.4.

Ms. O'Keefe noted that the Subcommittee had been working to surgically address the Applicant's request for Hardship Exemption relief.

The Subcommittee continued to review the Transportation Findings.

Mr. Cannon offered numbering corrections to the Conditions referenced in Finding TRF4.

Ms. Adams said the next RPP issue was Solid Waste Management, and that the draft decision was structured to grant relief from compliance with this section of the RPP.

Ms. Adams said the next group of Findings addressed Hazardous Waste Management. She suggested the Findings would be updated to acknowledge that portions of Lot 5 and Lot 6 were in the WHPA.

The Subcommittee reviewed the Hazardous Waste Management Findings.

Ms. Adams noted the Energy Findings, which acknowledged that Mashpee was a Green Community.

Mr. Knight suggested staff look at how the RPP Energy section should be adjusted once all Massachusetts cities and Towns adopt the Green Community standards and Energy Stretch Code.

Attorney Senatori acknowledged this could be part of a future discussion of changes to the Regional Policy Plan.

The Subcommittee reviewed the Affordable Housing and Heritage Preservation/Community Character Findings.

Ms. Adams noted the next issue for the Subcommittee to address was the project's probable benefits and detriments. She directed the Subcommittee to the Motions Sheet, noting that possible benefits for the Subcommittee's consideration included the Applicant providing more than the required Open Space and that the project met Best Development Practice (BDP) OS1.9.

Mr. Knight said it was important to acknowledge the improvement in the subdivision design over the prior layout. He also suggested the proposed uses were more in keeping with local zoning.

Ms. O'Keefe suggested an additional probable benefit was that the revised subdivision layout was an improvement over the prior layout.

Ms. Flynn suggested an additional benefit was that the property was being used in a manner more consistent with zoning, as opposed to the previously permitted Comprehensive Permit project.

Ms. Flynn moved to find that the proposed probable benefits from the proposed development are the protection of open space in excess of MPS OS1.3, that the project is consistent with BDP OS1.9, and that based on the materials submitted for the record, the property would be utilized in a manner more consistent with zoning. Mr. Short seconded the motion, and it passed unanimously.

The Subcommittee reviewed the draft General Conditions.

Attorney Ford asked how the subdivision road would be handled in terms of the Conditions? Would it have its own Preliminary Certificate that would have to be addressed before the road was built? What would be required to be completed before the road was put in?

Ms. Adams suggested that before any development, which included road construction, the Applicant would have to submit the final development plans for Commission review, as well as complete the protection of the required onsite Open Space.

Attorney Ford suggested submitted the final plans for Commission review and complying with the Open Space condition was not a problem.

Ms. Adams distributed to the Subcommittee and Applicant a suggested Open Space condition that gave the Applicant the option of permanently protecting the required onsite open space through a Conservation Restriction or deeding it to the Town of Mashpee. She noted this had to occur prior to any development, including road construction.

The Subcommittee, by consensus, said the draft condition was acceptable, as it gave the Applicant options but set a definite time frame by which time the Applicant had to protect the open space.

The Subcommittee reviewed the draft Water Resources Conditions.

Mr. Michaud noted a Water Resources Condition also required construction sequencing for the road as construction the road occurred, and for each lot.

Ms. Adams noted the Subcommittee should look at a prior handout which showed revised Water Resources Conditions.

Mr. Michaud suggested changes to the draft Condition dealing with development on Lot 5 and Lot 6 in areas that were either inside the WHPA or outside that area as shown on the development plans.

Attorney Ford said the draft Conditions should acknowledge that there could be development on those portions of the lots that were inside the WHPA. He acknowledged that MPS WR2.2 would apply to those areas within the WHPA. He said it was his understanding that the decision would be amended to require that Commission staff could require evidence that development could be consistent with MPS WR2.2.

Mr. Knight and Ms. Flynn noted the WHPA designation would be clearly marked. They suggested this issue would be of importance to the Town as well.

Ms. Adams noted the last draft Condition addressed engineered plans for the roadway design and for development on the lots.

Mr. Michaud said the discussion on 11/29/11 included a desire by staff that Commission staff review be required for the road construction. He acknowledged a stormwater operations manual had been provided for the post-construction condition of the road, and that the roadway plans would also be provided to the Town, so that compliance with a staff review should not be a burden to the Applicant.

Ms. Flynn noted there were state requirements for roadway stormwater management, too.

The Subcommittee's consensus was that review of the roadway drainage should be included in the draft decision.

The Subcommittee adjusted the proposed wording of draft Water Resources Condition dealing with the inspection of the stormwater system one year post-installation.

The Subcommittee reviewed the proposed draft Transportation and Hazardous Waste Conditions.

Attorney Ford suggested the amount referenced in the Transportation Findings in terms of the congestion management was an estimate. He noted the actual mitigation that might result could be less than the estimate, based on the actual development proposed.

The Subcommittee reviewed the proposed draft Hazardous Waste Conditions using a handout from Commission staff.

Ms. O'Keefe moved to approve the draft Subcommittee meeting Minutes of 11/29/11 as presented. Mr. Short seconded the motion, and it was unanimously approved.

Mr. Short moved approve the draft a written decision, as amended, for the proposed Cape Cod Cooperative Bank Subdivision as a Hardship Exemption with conditions. Ms. Flynn seconded the motion, and it was unanimously approved.

Mr. Short moved to recommend the Commission approve the proposed Cape Cod Cooperative Bank Subdivision as a Hardship Exemption with conditions. Ms. O'Keefe seconded the motion, and it was unanimously approved.

Mr. Short moved to adjourn the Subcommittee meeting. Ms. O'Keefe seconded the motion, and it was unanimously approved. Adjourned at 1:55 PM.

FINDINGS

The Commission has considered the DRI/Hardship Exemption application of Joel G. Crowell, President, Cape Cod Cooperative Bank (Applicant) for the proposed recombination and reorganization of an existing subdivision into a new arrangement of commercial, industrial and open space lots, including the realignment of the existing subdivision road, Rhiannon's Way, and based on consideration of such application and upon the information presented at the public hearings and submitted for the record, makes the following findings, pursuant to Sections 12, 13 and 23 of the Commission Act:

General Findings

GF1. As the date of the first substantive public hearing on the proposed project was August 11, 2011, this project was reviewed subject to the 2009 Regional Policy Plan (RPP), as amended in May 2011.

GF2. The proposed project that is the subject of this decision is 48.09 acres of land located at 588 Main Street, Route 130 in Mashpee that is currently subdivided into five lots. According to the site plans provided by the Applicant, and the *Application Narrative*, the proposed project is the recombination and reorganization of an existing subdivision into a new arrangement of two commercial, nine industrial and one open space lots. The proposed project would also include the realignment of the existing subdivision road, Rhiannon's Way. The proposal would maintain the two existing commercial lots, increase the number of industrial lots from two to nine, and create a 28.6 acre open space lot. According to the site plans provided with the Application, the site is split by two Town zoning districts. The area closest to Route 130 is zoned *Commercial (C-3)* while the remainder of the land is zoned *Industrial (I-1)*. See plan entitled *Preliminary Plan* prepared for Cape Cod Cooperative Bank in Mashpee by holmes & mcgrath, inc., dated 4/26/10, latest revision date 11/30/10, sheets 1, 2 and 3, attached to this decision as Exhibit A and incorporated by reference.

GF3. According to the application materials submitted by the Applicant, the Cape Cod Cooperative Bank acquired the property in June 2009 through a foreclosure deed.

GF4. According to materials submitted for the record, a permit exists for a 125-unit affordable housing complex permitted under Comprehensive Permit project subject to Chapter 40(B) of Massachusetts General Laws on part of the subject property. The original permit was granted in 2007, was renewed in May 2010, and has an expiration date of May 26, 2012.

GF5. Any development on each lot that independently exceeds a Development of Regional Impact threshold pursuant to the Commission's *Enabling Regulations* shall be subject to its own review process by the Cape Cod Commission.

GF6. The proposed project will be constructed in accordance with the following plans: *Preliminary Plan* prepared for Cape Cod Cooperative Bank in Mashpee by holmes & mcgrath, inc., dated 4/26/10, latest revision date 11/30/10, sheets 1, 2 and 3.

GF7. Based on a 7/22/11 Email from Tom Fudala, the Mashpee Town Planner which states that *"the proposed project is consistent with our LCP and Zoning relative to use and dimensional requirements"* the Commission finds the proposed project is consistent with Mashpee's Commission-certified Local Comprehensive Plan (LCP) and zoning.

GF8. Based on the 7/22/11 Email from Mr. Fudala, which also states *"[w]e can only determine consistency with subdivision regulations, with those portions of our zoning relating to stormwater management and with Board of Health and other local regulations when it comes back to the Town for subdivision approval"* the Commission finds that upon approval by the local boards, the proposed project can be found consistent with Mashpee's local development bylaws and zoning.

GF9. There are no Districts of Critical Planning Concern within the Town of Mashpee. As such, Commission finds this criterion is not applicable.

GF10. The Commission finds the project's probable benefits include the protection of open space in excess of MPS OS1.3, the provision of open space in a Significant Natural Resource Area per BDP OS1.9, and that based on the materials submitted for the record, the property would be utilized in a manner more consistent with zoning.

Land Use Findings

LUF1. Based on the materials submitted for the record, the Commission finds the Town of Mashpee does not have an adopted Land Use Vision Map, and therefore that Minimum Performance Standard (MPS) LU1.1 does not apply to the project.

LUF2. MPS LU1.2 requires development to be clustered on the site and with adjacent uses to the maximum extent possible. Based on the materials submitted for the record, the Commission finds that the proposed re-subdivision will result in the lots being clustered toward the street-side of the site, and leaving a 26.6 acre lot as open space to the rear. The Commission further finds that this design is a significant improvement over the previous layout and maximizes the contiguous open space on the property, and that the proposed project is therefore consistent with MPS LU1.2.

LUF3. The Commission finds that MPS LU2.1, MPS LU2.2, MPS LU3.1 and MPS LU3.2 do not apply to the project.

Economic Development Findings

EDF1. The Applicant is required under the 2009 RPP to meet the waiver requirement MPS ED1.3 because the Town of Mashpee does not have a Regional Land Use Vision Map. The project is a new commercial subdivision and therefore is required to meet four (4) of the nine (9) waiver criteria offered under MPS ED1.3.

EDF2. Based on the materials submitted for the record, the Commission grants the Applicant relief from compliance with MPS ED1.3 for any development on the site that does not independently exceed a DRI threshold and finds that a literal enforcement of the provisions of the Act and compliance with MPS ED1.3 would involve substantial hardship, financial or otherwise; and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

Water Resources Findings

WRF1. Based on the materials submitted for the record, the subdivision is located in a number of water resource areas mapped by and protected under the RPP:

a) General aquifer protection (RPP Section WR1)
b) The entire site is located in a Potential Public Water Supply Area (PPWSA; RPP Section WR2)
c) The west portion of the site is located in a Wellhead Protection Area (WHPA; RPP Section WR2)
d) The west portion of the site is located in the Quashnet River watershed, a Marine Water Recharge Area (MWRA; RPP Section WR3)
e) The east portion of the site is located in the Mashpee River watershed (MWRA; RPP Section WR3)

WRF2. Based on a 7/19/11 letter from Attorney Michael D. Ford, Esq., representing the Applicant, the Applicant has requested relief from MPS WR1.2, WR1.3, WR1.4, *"and generally MPS WR 3."* The Applicant also requested relief from compliance with the RPP stormwater section, WR7 in a letter dated 11/21/11.

WRF3. MPS WR1.2 requires that "[d]*evelopment and redevelopment shall identify their proposed drinking water wells and existing private drinking water wells on abutting properties within 400 feet and assess the impact of the development on the water quality of these wells and all other existing wells that may potentially be affected by the proposed development. Septic systems and other sources of contamination shall be sited to avoid adversely affecting downgradient existing or proposed wells."* Based on the materials submitted for the record, the Commission also finds that the Applicant has identified three (3) private wells on adjacent properties. The Applicant also identified a property that is not connected to municipal water supply and likely relies on a private well. The Commission finds that modeling indicates that groundwater beneath the site flows away from these properties and that septic systems could be sited such that identified private wells would not be impacted. The Commission finds further that septic systems are reviewed and permitted by the local Board of Health. As such, the Commission finds that MPS WR1.2 is met.

WRF4. MPS WR1.3 requires that *"[d]evelopments of Regional Impact that withdraw more than 20,000 gallons of water per day shall demonstrate through a groundwater study that the project will not have adverse impacts on groundwater levels or adjacent surface waters and wetlands. The study shall include mapping of surface water morphology and comparison of*

existing and affected water-table fluctuations." Based on materials submitted for the record, the project will be connected to the public water supply and a well is not proposed as part of the project. Therefore, the Commission finds that MPS WR1.3 does not apply to the project.

WRF5. MPS WR1.4 requires that *"[a]ll residential subdivisions of five or more lots and all commercial subdivisions of land shall cluster the proposed development unless inconsistent with local bylaws. Cluster plans shall use site designs that maximize contiguous open space, respect the natural topography and character of the site, and employ shared wastewater treatment, community water supply alternatives and Low Impact Development (LID) landscaping to allow more compact development."* Based on materials submitted for the record, the Commission finds that the subdivision is a cluster plan that employs low-impact landscaping and stormwater designs for the road layout. Shared wastewater infrastructure is not proposed as required by MPS WR1.4. The subdivision will be connected to the public water supply. Based on the materials submitted for the record, the Commission also finds that the Applicant has identified three (3) private wells on adjacent properties. The Applicant also identified a property that is not connected to municipal water supply and likely relies on a private well. The Commission finds that modeling indicates that groundwater beneath the site flows away from these properties and that septic systems could be sited such that identified private wells would not be impacted. Therefore, the Commission finds that it is appropriate to grant relief from MPS WR1.4, and finds that a literal enforcement of the provisions of the Act and compliance with MPS WR1.4 would involve substantial hardship, financial or otherwise; and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

WRF6. MPS WR2.6 requires that *"the maximum nitrogen loading standard for impact on groundwater shall be 1 ppm for development. Guidance on methodology to meet this standard can be found in Cape Cod Commission Nitrogen Loading Technical Bulletin 91-001, as amended."* Also, MPS WR2.5 requires *"no development shall be permitted within 400 feet of an identified future well site."* As provided by the RPP, *"[t]he Commission may determine that [MPS applicable to PPWSA] do not apply [to the project site] provided that supporting information from the Town or Water District demonstrates to the Commission that the area will not be considered as potential water supply areas."* The Commission finds that MPS WR2.5 and MPS WR2.6 do not apply after considering correspondence received from Andrew Marks, the Mashpee Water District Operations Manager, which *"confirms that at this time the Mashpee Water District has no intention to develop a well site at the Cape Cod Cooperative Bank subdivision."*

WRF7. Minimum Performance Standards in RPP Water Resources Section WR3 seek to *"preserve and restore the ecological integrity of marine water embayments and estuaries."* The trophic conditions of both the Quashnet River and the Mashpee River have been evaluated by The Massachusetts Estuaries Project (MEP). Both systems are nitrogen overloaded according to the MEP. As a result, a no-net nitrogen limit applies to both systems. The no-net limit may be met in accordance with MPS WR3.4.

WRF8. MPS WR3.4 states that in *"watersheds to estuaries/embayments where development and redevelopment must meet either WR3.1 or WR3.2, development and redevelopment may meet these standards by providing an equivalent nitrogen offset contribution to be used toward meeting the intent of WR3.1 or WR3.2 as provided in the following paragraph: The load requirements of WR3.1 and WR3.2 [above] may be achieved by providing wastewater treatment for the development or redevelopment and additional treatment capacity for nearby*

land uses, installation of alternative denitrifying technologies for existing septic systems in the same Marine Water Recharge Area, and/or an equivalent contribution of $1,550 per kg/yr of nitrogen towards a municipal or watershed effort that achieves the intent of WR3.1 and WR3.2."

WRF9. Based on the materials submitted for the record, the Commission finds that it is appropriate to require as a condition of this decision, offsets pursuant to MPS WR3.4 to be required when additional development is proposed for the subdivision. The Commission also finds that a fair share nitrogen credit of $55,056 is applicable to the Mashpee River watershed based on the size of the parcel and a critical nitrogen load developed by the MEP for the Mashpee River.

WRF10. Based on the materials submitted for the record, the Commission finds that the majority of the proposed open space lot will be located in the Wellhead Protection Area (WHPA), although portions of new Lot 5 and new Lot 6 will also be in the WHPA.

WRF11. The Commission finds that pursuant to MPS WR1.1 and MPS WR2.1, development and redevelopment on the subdivided parcel is required to meet the 5-ppm-N nitrogen loading concentration limit. Based on this, the Commission finds it is appropriate as a condition of this decision that additional development and redevelopment on the project site comply with MPS WR1.1 and MPS WR2.1.

WRF12. MPS WR2.2 requires that *"development and redevelopment that involves the use, treatment, generation, handling, storage, or disposal of Hazardous Materials or Hazardous Wastes, with the exception of household quantities, shall not be permitted in Wellhead Protection Areas, except as provided in WM1.2 and WM1.3."* Based on materials submitted for the record, the Commission finds proposed development and redevelopment on portions of proposed subdivision Lot 5 & Lot 6 that are located within the Wellhead Protection Area is subject to MPS WR2.2. The Commission also finds that it is appropriate to require as a condition of this decision that any development and redevelopment on proposed subdivision Lot 5 & Lot 6 that is located within the Wellhead Protection Area shall comply with MPS WR2.2.

WRF13. The Regional Policy Plan defines a Hazardous Material as *"any chemical or substance that when released into the environment will pose a significant contaminant threat to groundwater and drinking water supplies, including petroleum products, petroleum distillates, organic and inorganic solvents, oil-based paints, oil-based stains, insecticides, herbicides, rodenticides, and pesticides. Hazardous Materials do not include Hazardous Wastes, Articles, Consumer Products, and Cosmetics."* The Regional Policy Plan defines a Hazardous Waste as *"any Hazardous Waste, Universal Waste or Waste as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.010. Hazardous Wastes do not include Hazardous Materials and bio-medical wastes regulated by 105 CMR 480.000."*

WRF14. The Regional Policy Plan defines a Household Quantity of Hazardous Material or Hazardous Waste as *"any combination, or all of the following:*

(a) 275 gallons or less of oil on site at any time to be used for heating of a structure, or to supply an emergency generator; and
(b) 25 gallons or equivalent dry weight, total, of Hazardous Material(s) on site at any time, excluding oil for heating of a structure or to supply an emergency generator; and

(c) A quantity of Hazardous Waste generated at the Very Small Quantity Generator level as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.000 and which is accumulated or stored in 55 gallons or less at any time on the site."

WRF15. Minimum Performance Standards in RPP Water Resources Section WR7 seek to *"protect the overall water quality of the aquifer and its resources by minimizing impervious surfaces and improving stormwater quality as much as possible."* Based on information submitted for the record for the subdivision road, the Commission finds the plans for the subdivision road are generally consistent with MPS in RPP Water Resources Section WR7. Plans for the subdivision road employ low-impact landscaping and stormwater designs for the road layout, as required by MPS WR1.4 and MPS WR7.4, and a stormwater management report that includes an erosion control plan and operations and maintenance (O&M) procedures for roadway drainage was provided as required by MPS WR7.9 and WR7.10.

WRF16. The Commission finds that development plans submitted for the record have not been proposed for the eleven (11) individual lots. Therefore, grading and drainage plans for these lots have not been reviewed or approved by the Commission. However, local zoning bylaws require development to employ low-impact stormwater designs to manage runoff. Therefore, the Commission finds that it is appropriate to grant relief from MPS WR7.1 through WR7.8 for future development on the eleven (11) lots, and finds that a literal enforcement of the provisions of the Act and compliance with these standards would involve substantial hardship, financial or otherwise; and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

WRF17. MPS WR7.9 requires that *"[c]onstruction best management practices for erosion and sedimentation controls shall be specified on project plans to prevent erosion, control sediment movement and stabilize exposed soils."* The Commission finds that the project shall comply with this standard as a condition of project approval.

WRF18. MPS WR7.10 requires that *"one year from completion of the system, a Professional Engineer shall inspect the system and submit a letter certifying that the system was installed and functions as designed."* The Commission finds that the project shall comply with this provision of MPS WR7.10 as a condition of project approval.

WRF19. MPS WR7.11 requires that in *"Wellhead Protection Areas, stormwater systems for land uses that have a high risk of contaminating groundwater, such as vehicle maintenance areas and loading docks, shall install a mechanical shut-off valve or other flow-arresting device between the catch basin or other stormwater-capture structure draining this area and the leaching structures."* As noted in Finding WRF10, that portions of proposed new subdivision Lot 5 & Lot 6 are located in a Wellhead Protection Area. As such, the Commission finds that it is appropriate to require as a condition of project approval that any development or redevelopment on proposed subdivision Lot 5 & Lot 6 that is located within the Wellhead Protection Area shall meet MPS WR7.11.

Coastal Resources Findings

CRF1. According site plans submitted as part of the DRI/HDEX application, the project site is located well inland of any of the coastal resources identified in the RPP Coastal Resources section. Based on this, the Commission finds the proposed project also does not involve any of the activities or resources described in the RPP Coastal Resources section, and that the MPS under the RPP Coastal Resources section are not applicable to this project.

Wildlife and Plant Habitat Findings
WPHF1. The project site is located within a Significant Natural Resources Area (SNRA) due to the presence of a Potential Public Water Supply Area as mapped by the Regional Policy Plan; the western half of the site is also mapped SNRA for public water supply Wellhead Protection Area. The site is not mapped for state listed rare species.

WPHF2. The Applicant submitted a Natural Resources Inventory (NRI) for the site, which complies with the requirements of MPS WPH1.1. According to this NRI, the site contains no wetland resources, and consequently, the Commission finds the Wetlands MPS do not apply to this project.

WPHF3. Based on the NRI and other materials submitted for the record, the Commission finds the proposed project is consistent with the Wildlife and Plant Habitat MPS of the Regional Policy Plan.

Open Space Findings
OSF1. Due to the site's location within SNRA, the open space requirement is twice the total developed area, or 2 x 21.2 acres = 42.4 acres. However, most of the industrial subdivision is located within the portion of the parcel that is mapped SNRA due to the presence of Potential Public Water Supply Areas. As noted in Water Resources Finding 6, Andrew Marks, the Mashpee Water District Operations Manager, submitted a letter for the record dated 9/12/11 which "*confirms that at this time the Mashpee Water District has no intention to develop a well site at the Cape Cod Cooperative Bank subdivision.*" Based on Mr. Marks' letter, the Commission finds the Applicant is eligible for the *Removal of SNRA Designation for the Calculation of the Open Space Requirement* provision in MPS OS1.3.

OSF2. Pursuant to MPS OS1.3, the Commission finds the SNRA designation may be lifted, and the open space requirement for the project can be reduced to an area equivalent to the total developed area, or 21.2 acres. Based on this, the Commission finds the Applicant's provision of 26.8 acres at the rear of the site within the Wellhead Protection Area complies with MPS OS1.3 and exceeds the RPP open space requirements by 5.6 acres.

OSF3. The Applicant proposes to protect in perpetuity open space area identified as *Open Space Parcel 1* on the plan entitled *Preliminary Plan* prepared for Cape Cod Cooperative Bank in Mashpee by holmes & mcgrath, inc., dated 4/26/10, latest revision date 11/30/10, sheet 1.

Transportation Findings
TF1. The Applicant's engineer, Vanasse, Hangen Brustlin, Inc. provided a calculation of the estimated trip generation for the proposed commercial subdivision based on the Institute of Transportation Engineers *Trip Generation*, 8th Edition, 2008. Based on this calculation, the project's estimated trip generation is shown in *Transportation Table 1,* below:

Transportation Table 1:

Proposed Development	Morning Peak Hour	Afternoon Peak Hour	Daily
5,130 square foot restaurant	44*	43*	648
4,787 square foot restaurant	41*	40*	610
17,777 square feet of Medical/Dental Office	41	62	643
69,300 square feet of manufacturing	51	51	265
Total	177	196	2,166

*Peak hour restaurant trips in table have been reduced based on a 25% pass-by rate.

The Commission finds the Applicant's trip generation calculation for the proposed uses shown in the *Transportation Table 1*, above, were conducted in conformance with MPS TR0.1.

TRF2. MPS TR2.1 requires that all DRIs reduce new vehicle trips in and out of the site by 25%. The Applicant has proposed a donation of vacant, developable land as allowed by MPS TR2.11. The Commission finds that the proposed vacant developable land has the potential to off-set 72 daily trips, 10 peak hour trips, and 12 afternoon peak hour trips. Based on the projected increase in average daily traffic as shown by the table in Finding TRF1 of 2,166 trips per day, the trip reduction requirement for this project is 542 [2,166 x .25] daily vehicle trips. With the acceptance of the vacant developable land, the Applicant is credited with 72 daily trips, reducing the trip reduction requirement to 470 trips (542 – 72) to comply with MPS TR2.1. The Commission finds that the trip reduction requirement for the proposed subdivision based on the transit equivalency equation to offset 470 trips is $1,001,400. The Commission finds that it is appropriate grant relief from MPS TR2.1, and finds that a literal enforcement of the provisions of the Act and compliance with MPS TR2.1 would involve substantial hardship, financial or otherwise; and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

TRF3. MPS TR3.4 requires applicants to offset or mitigate all peak hour traffic impacts of the project. The Commission finds that the cost to offset all peak hour traffic based on the Vehicle Miles Traveled equation, including the acceptance of the vacant developable land (12 peak hour trips) indicates that the Applicant needs to offset 184 trips (196 – 12). Based on the Vehicle Miles Traveled equation, the Commission finds that the cost to offset 184 afternoon peak hour trips is $427,534.

TRF4. The Applicant has requested a schedule of mitigation costs based on an assessment of transportation impacts. Transportation Condition TC2 outlines a schedule of costs per peak hour trip. The Applicant shall be required to submit the proposed building sizes and types, and an estimate of peak hour trip generation based on Institute of Transportation Engineers Trip Generation Manual or its equivalency for Commission staff review and approval prior to issuance of a Final Certificate of Compliance for each lot. Commission staff will then calculate the mitigation costs for development on lots based on the schedule outlined in Condition TC2. Therefore, the Commission finds that the project, as conditioned, complies with MPS TR3.4.

TRF5. MPS TR1.4 requires all site driveways to be built in conformance with access management guidelines. Based on the proposed site plans submitted for the record, the Commission finds that the proposed site driveway will be built in conformance with Commission access management guidelines and as such, the proposed project complies with MPS TR 1.4.

TRF6. MPS TR1.6 requires that applicants do not place signs or vegetation that would obstruct a driver's view for exiting traffic. Based on a review of the site plans submitted for the record, the Commission finds the proposed project will not place any obstruction that has the potential to block the sight of any exiting driver and therefore finds the proposed project complies with MPS TR1.6.

TRF7. MPS TR1.8 requires the Applicant to ensure that safe stopping sight distance is available at all driveway locations. The Applicant measured the stopping sight distance at the driveway

and the stopping sight distance at the driveway exceeds the minimum required by the American Association of State Highway and Transportation Officials. Based on this information, the Commission finds that the Applicant has demonstrated that acceptable stopping sight distance is available at all site driveways, and that the proposed project complies with MPS TR1.8.

Solid Waste Management Findings

SWF1. MPS WM2.1 requires that *"[d]evelopment and redevelopment projects shall address the disposal of construction waste..."* and that *"a plan shall be provided to demonstrate how the applicant proposes to handle solid wastes, construction and demolition waste and recyclable materials currently categorized by the* [DEP] *as a waste ban material."* MPS WM2.2 describes the requirements of a construction and demolition (C&D) waste management plan. MPS WM2.3 requires a post-construction waste and recyclables management plan, and MPS WM2.4 addresses the management of *"significant amounts"* of food wastes.

SWF2. The current proposed project is the re-subdivision of a vegetated site. Solid wastes from subdivisions are generated from land-clearing and construction activities (brush, stumps, wood chips, etc.).

SWF3. Based on the materials submitted for the record, and the Town of Mashpee's requirements for solid waste management, the Commission grants the Applicant relief from compliance with Regional Policy Plan's Solid Waste Management requirements, and finds that a literal enforcement of the provisions of the Act and Regional Policy Plan in the Solid Waste Management issue area would involve substantial hardship, financial or otherwise; and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

Hazardous Waste Management Findings

HAZWF1. MPS WM1.5 requires that *"[a]ny development or redevelopment that uses, handles, generates, treats, or stores Hazardous Waste..."* be in compliance with the state's Hazardous Waste regulations. The RPP also specifies three items must be provided to show compliance with this requirement for purposes of Commission review:

> (a) registration with or notification to the Massachusetts Department of Environmental Protection as a generator of Hazardous Waste;
> (b) a written plan or protocol to manage the Hazardous Waste prior to disposal; and
> (c) a signed contract with a registered, licensed company to dispose of the Hazardous Waste.

HAZWF2. Based on the plans submitted with the DRI/HDEX application, the majority of the proposed open space lot will be located in the Wellhead Protection Area (WHPA), although portions of new Lot 5 and new Lot 6 will also be in the WHPA. The site is also mapped as a Potential Public Water Supply Area (PPWSA), however the Commission finds the PPWSA designation can be lifted based on the 9/12/11 letter from the Mashpee Water District Operations Manager, Andrew Marks.

HAZWF3. MPS WM 1.1 requires that *"development and redevelopment that involves the use, treatment, generation, handling, storage, or disposal of Hazardous Materials and/or Hazardous Wastes, with the exception of Household Quantities or less, shall not be allowed within Wellhead Protection Areas and Potential Public Water Supply Areas, except as provided in WM1.2 and WM1.3."*

HAZWF4. Based on site plans for the reconfigured subdivision as submitted for the record, small part of new Lot 5 and new Lot 6 are located in a Wellhead Protection Area. As such, the Commission finds development and redevelopment on the portions of these lots that are located inside of the Wellhead Protection Area is subject to Hazardous Materials and Hazardous Wastes restrictions per MPS WR2.2 and MPS WM1.1. Based on this, the Commission finds it appropriate to condition any future development or redevelopment on the portion of Lot 5 & Lot 6 that is located inside of the Wellhead Protection Area to comply with the RPP Hazardous Waste MPS WM1.1 and MPS WM1.5.

Energy Findings

EF1. The Town of Mashpee is a Green Community as defined by the Massachusetts Green Communities Act, and determined by the Executive Office of Energy and Environmental Affairs Green Communities division. To achieve this designation, the Town of Mashpee adopted the MA Energy Stretch Code (Code), Appendix AA of the MA State Building Code (780 CMR). The purpose of the Code *"is to provide a more energy efficient alternative to the base code energy for new and existing buildings."* (Source: 780 CMR 115 AA, Section 101.3, *Purpose and Intent*). Given that the Applicant has requested a Hardship Exemption, and there are currently no buildings proposed by which to apply the Regional Policy Plan MPS for energy efficiency and conservation, the Commission finds that the required application of this Code for future development of the site that does not independently exceed a DRI review threshold is sufficient to address the RPP energy efficiency and conservation goals.

EF2. The Commission finds the Code does not address the renewable energy component of the RPP Energy goal, which is defined through the On-Site Renewable Energy Generation MPS E1.5. However, based on the materials submitted for the record, the Commission grants the Applicant relief from compliance with MPS E1.5 for development on the site that does not independently exceed a DRI review threshold, and finds that a literal enforcement of the provisions of the Act and MPS E1.5 would involve substantial hardship, financial or otherwise; and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

Affordable Housing Findings

AHF1. The Applicant is proposing a non-residential subdivision plan of the parcel into two commercial and nine industrial lots, along with another lot that is to be designated for open space. Based on this, the project is subject to review under RPP Goal AH3: Community Participation and MPS AH3.1, the mitigation standards for commercial DRIs.

AHF2. Based on the materials submitted for the record, the Commission grants the Applicant relief from compliance with MPS AH3.1 for development on the site that does not independently exceed a DRI review threshold, and finds that a literal enforcement of the provisions of the Act and MPS AH3.1 would involve substantial hardship, financial or otherwise; and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

Heritage Preservation and Community Character Findings

HPCCF1. The Historic MPS of the RPP require the preservation of historic resources, cultural landscapes and cultural resources. MPS HPCC1.1 requires preservation of identified historic structures and HPCC1.2 requires that identified cultural landscapes be preserved. MPS HPCC1.3 requires that Massachusetts Historic Commission be consulted to determine if there are potential impacts to known archeological sites or resources. The proposed project is

located outside of any historic districts and there are no historic structures or cultural landscapes on the site. On March 22, 2011, the Massachusetts Historical Commission (MHC) determined that the proposed project was unlikely to have a significant effect on historic or archaeological resources.

HPCCF2. Based on the materials submitted for the record, the Commission grants the Applicant relief from compliance with the Regional Policy Plan's Heritage Preservation and Community Character requirements for development on the site that does not independently exceed a DRI review threshold, and finds that a literal enforcement of the provisions of the Act and Regional Policy Plan in this area would involve substantial hardship, financial or otherwise; and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Act.

CONCLUSION

Based on the Findings above, the Commission hereby concludes:

1. The proposed project is consistent with Mashpee's development bylaws upon subdivision approval by the Town of Mashpee.

2. The proposed project is consistent with Mashpee's Commission-Certified Local Comprehensive Plan.

3. The proposed project does not fall within a District of Critical Planning Concern.

4. The probable benefits from the proposed development are greater than the probable detriments from the proposed development.

CONDITIONS

The Commission hereby approves with conditions the application of Joel G. Crowell, President, Cape Cod Cooperative Bank for the proposed recombination and reorganization of an existing subdivision into a new arrangement of commercial, industrial and open space lots, including the realignment of the existing subdivision road, Rhiannon's Way, as a Development of Regional Impact Hardship Exemption, provided the following conditions are met:

General Conditions

GC1. This decision is valid for a period of seven (7) years, and local development permits may be issued pursuant hereto for a period of seven (7) years from the date of this written decision.

GC2. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, and remain in compliance herewith, shall be deemed cause to revoke or modify this decision.

GC3. The Applicant shall obtain all necessary federal, state, and local permits for the proposed project.

GC4. No development work, as the term *"development"* is defined in the Cape Cod Commission Act, shall be undertaken until all appeal periods have elapsed or, if such an appeal has been filed, until all judicial proceedings have been completed.

GC5. Prior to issuance of a Preliminary Certificate for any proposed *"development"* as defined by the Commission Act and as approved herein, the Applicant shall submit final plans as approved by state, federal, and local boards for review by Commission staff to determine their consistency with this decision. If Commission staff determines that the final plans are not consistent with those plans approved as part of this decision, the Commission shall require that the Applicant seek a modification to this decision in accordance with the Modification section of the Commission's *Enabling Regulations* in effect at the time the modification is sought.

GC6. All development and redevelopment shall be constructed in a manner consistent with the following plans and other information attached hereto as Exhibit A: *Preliminary Plan* prepared for Cape Cod Cooperative Bank in Mashpee by holmes & mcgrath, inc., dated 4/26/10, latest revision date 11/30/10, sheets 1, 2 and 3. This plan is also on file with the Cape Cod Commission.

GC7. Any deviation during construction to the approved plans and other documents shall require approval by the Commission through the Modification process pursuant to the Commission's *Enabling Regulations*. The Applicant shall submit to the Commission any additional information deemed necessary to evaluate any modifications to the approved plans or project in this decision.

GC8. Prior to commencement of any *"development"* as defined by the Commission Act on any lot, and prior to issuance by the Town of Mashpee of a Building Permit, the Applicant shall obtain a Preliminary Certificate of Compliance from the Commission which states that all conditions in this decision pertaining to a Preliminary Certificate of Compliance have been met.

GC9. Prior to issuance by the Town of Mashpee of a Certificate of Use/Occupancy for development on any lot, the Applicant shall obtain a Final Certificate of Compliance from the Commission which states that all conditions in this decision pertaining to a Final Certificate have been met.

GC10. The Applicant shall notify Commission staff in writing at least thirty (30) calendar days prior to its intent to seek either a Preliminary or Final Certificate of Compliance. Such notification shall include a list of key contact(s), along with their telephone numbers and Email addresses, for questions that may arise during the Commission's compliance review. Commission staff shall complete an inspection under this condition, if needed, and inform the Applicant in writing of any deficiencies and corrections needed. The Applicant understands that the Commission has no obligation to issue any Certificate of Compliance unless all conditions are complied with.

GC11. If all required building and site work is not complete at the time a Final Certificate of Compliance is sought by the Applicant from the Commission, any work that is incomplete shall be subject to an escrow agreement of form and content satisfactory to Commission counsel. The amount of the escrow agreement shall equal 150% of the cost of that portion of the incomplete work, including labor and materials. The escrow agreement may allow for partial release of escrow funds upon partial completion of work. Funds to secure the escrow agreement shall be payable to the *Barnstable County Treasurer* with the work approved by Commission staff per the escrow agreement prior to release of the escrow funds. Unexpended escrow funds shall be returned to the Applicant, with interest, upon completion of the required work. All site work secured by this Condition and the escrow agreement, if necessary, shall be completed within six (6) months of issuance of a Final Certificate of Compliance from the Commission.

G12. Prior to commencement of any *"development"* as defined by the Commission Act on any lot, and prior to issuance by the Town of Mashpee of a Building Permit, and prior to issuance by the Commission of a Preliminary Certificate of Compliance, the Applicant shall record this decision against all lots created by Exhibit A: *Preliminary Plan* prepared for Cape Cod Cooperative Bank in Mashpee by holmes & mcgrath, inc., dated 4/26/10, latest revision date 11/30/10, sheets 1, 2 and 3. Prior to commencement of any *"development"* as defined by the Commission Act on any lot, and prior to issuance by the Town of Mashpee of a Building Permit, and prior to issuance by the Commission of a Preliminary Certificate of Compliance, the Applicant shall also provide evidence of such recording to the Cape Cod Commission.

Open Space Conditions

OSPC1. In accordance with Finding OSF3, prior to issuance of a Preliminary Certificate for any proposed *"development"* as defined by the Commission Act and as approved herein, the Cape Cod Cooperative Bank shall provide to the Cape Cod Commission a conservation restriction consistent with Massachusetts General Laws Chapter 184, Section 31 – 33 and accompanying plan which provides that 26.8 acres identified as open space on the plan attached hereto as Exhibit A shall be preserved as permanent open space. The restriction, Grantee, and site plan shall be provided for review and approval by Commission counsel, and shall be executed and recorded at the Registry of Deeds or Registry District of the Land Court. Proof of recording shall be provided to the Commission prior to issuance of a Preliminary Certificate of Compliance.

OSPC2. As an alternative to Condition OSPC1, above, in accordance with Finding OSF3, prior to issuance of a Preliminary Certificate for any proposed *"development"* as defined by the Commission Act and as approved herein, the Cape Cod Cooperative Bank shall convey the 26.8 acre parcel identified as open space on the plan attached hereto as Exhibit A to the Town of Mashpee's Conservation Commission for conservation purposes in perpetuity. Proof of conveyance and recording at the Barnstable County Registry of Deeds or Registry District of the Land Court shall be provided to the Commission prior to issuance of a Preliminary Certificate of Compliance.

Water Resources Conditions

WRPC1. Prior to issuance of a Preliminary Certificate of Compliance for any lot by the Commission and prior to issuance of any Building Permit for any lot by the Town of Mashpee, preliminary development plans shall be submitted to the Commission for staff review and approval consistent with MPS WR1.1 and MPS WR2.1. In its determination whether development meets the 5-ppm-N limit, Commission staff shall use the nitrogen loading calculation method described in Technical Bulletin 91-001 and shall consider the common road layout and protected open space areas in proportion to the respective lot size relative of the subdivided parcel.

WRPC2. Prior to any development or redevelopment on Lot 5 and Lot 6 and prior to issuance of Preliminary Certificate of Compliance for Lots 5 & Lot 6 by the Commission, and prior to issuance of any Building Permit for Lots 5 & 6 by the Town of Mashpee, any development and redevelopment on proposed subdivision Lot 5 & Lot 6 that is located within the Wellhead Protection Area shall submit for Commission staff review and approval plans to demonstrate compliance with MPS WR7.11 as described in Finding WRF19.

WRPC3. Prior to issuance of a Preliminary Certificate of Compliance for development on any lot by the Commission and prior to issuance of any Building Permit for any lot by the Town of

Mashpee, the nitrogen load attributable to the proposed development shall be offset. Offsets for proposed development submitted for Commission staff review shall be calculated by Commission staff using the nitrogen loading calculation method described in Technical Bulletin 91-001 and in accordance with MPS WR3.4: $1,550 per kilograms of nitrogen per year. The offset shall be adjusted by the nitrogen credit identified in Findings WRF9, above, in proportion to the respective lot size relative of the subdivided parcel. The offset shall be used toward municipal or watershed efforts that achieve the intent of MPS WR3.1 and MPS WR3.2.

WRPC4. Prior to issuance of a Preliminary Certificate for any proposed *"development"* as defined by the Commission Act and as approved herein including the revised subdivision road, and prior to issuance of a Preliminary Certificate of Compliance by the Commission for development or redevelopment on any lot and prior to issuance of any Building Permit for any lot by the Town of Mashpee, engineered plans for erosion and sedimentation controls shall be submitted for Commission staff review and approval to ensure compliance with MPS WR7.9.

WRC5. As required by MPS WR7.10, one year following completion of the drainage system for the subdivision road, a letter certified by a professional engineer licensed in the State of Massachusetts shall be submitted for staff review and approval certifying that the system was installed and functions as designed.

WRC6. Any development and redevelopment on proposed subdivision Lot 5 & Lot 6 that is located within the Wellhead Protection Area shall be restricted to not more than Household Quantities of Hazardous Materials as required by MPS WR2.2 and as described in Finding WRF12.

WRPC8. Prior to issuance of a Preliminary Certificate of Compliance for development or redevelopment on Lot 5 and/or Lot 6 by the Commission, and prior to issuance of any Building Permit by Town of Mashpee for development or redevelopment on Lot 5 and/or Lot 6, the limits of the Wellhead Protection Area/Zone II on Lot 5 and Lot 6 shall be surveyed by a professional surveyor, and shall be demarcated with signage.

WRPC9. Prior to issuance of a Preliminary Certificate of Compliance for development or redevelopment on Lot 5 and/or Lot 6 by the Commission, and prior to issuance of any Building Permit by Town of Mashpee for development or redevelopment on Lot 5 and/or Lot 6, Commission staff will conduct a field visit to review the field demarcation of the Wellhead Protection Area/Zone II to ensure its consistency with the Regional Policy Plan Wellhead Protection Area/Zone II delineation and compliance with MPS WR7.11 and MPS WR2.2.

WRPC10. Prior to issuance of a Preliminary Certificate of Compliance by the Commission for development or redevelopment on Lot 5 & Lot 6 that is located within the Wellhead Protection Area, and prior to issuance of any Building Permit by Town of Mashpee for development or redevelopment on Lot 5 and/or Lot 6 that is located within the Wellhead Protection Area, the Applicant shall submit for Commission staff review and approval information and plans indicating the type and size of development or redevelopment on Lot 5 and/or Lot 6 that is located within the Wellhead Protection Area so that consistency with the Wellhead Protection Area and MPS WR2.2 can be ensured.

Transportation Conditions

TC1. Prior to issuance of a Preliminary Certificate of Compliance by the Commission for any lot and prior to issuance of any Building Permit for any lot by the Town of Mashpee, the Applicant

shall submit for Commission staff review the proposed building type and size, the peak hour trips based on the Institute of Transportation Engineers *Trip Generation* manual or its equivalency.

TC2. Prior to issuance by the Commission of a Final Certificate of Compliance for any lot and prior to issuance of Certificate of Use/Occupancy for any lot by the Town of Mashpee, the Applicant shall pay fair-share mitigation costs based on the number of peak hour trips estimated in condition TC1 and the following schedule:

Proposed Development	Cost Per Peak Hour Trip
Restaurant	$2,137
Specialty Retail	$1,675
Medical Office	$2,583
Industrial	$3,147

Hazardous Waste Management Conditions

HAZWC1. Development and redevelopment on those portions of Lot 5 and Lot 6 that is located in the Wellhead Protection District that involves the use, treatment, generation, handling, storage, or disposal of Hazardous Wastes, with the exception of *Household Quantities* or less of *Hazardous Waste*, as defined by the RPP, shall not be allowed on site. For the purposes of this condition, *Hazardous Waste* shall be defined as any Hazardous Waste, Universal Waste or Waste as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.000. *Hazardous Wastes* shall not include Hazardous Materials and bio-medical wastes regulated by 105 CMR 480.000. For the purposes of this condition, a *Household Quantity* shall be defined as a quantity of *Hazardous Waste* generated at the Very Small Quantity Generator level as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.000 and which is accumulated or stored in 55 gallons or less at any time on the site.

HAZWFC2. Prior to issuance by the Commission of a Final Certificate of Compliance for any development or redevelopment on Lot 5 and/or Lot 6 that that uses, handles, generates, treats, or stores Hazardous Waste as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.000, and prior to issuance of a Certificate of Use/Occupancy for any development or redevelopment on Lot 5 and/or Lot 6, the Applicant shall provide for Commission staff review and approval:

(a) a registration with or notification to the Massachusetts Department of Environmental Protection as a generator of Hazardous Waste;
(b) a written plan or protocol to manage the Hazardous Waste prior to disposal; and
(c) a signed contract with a registered, licensed company to dispose of the Hazardous Waste.

ISSUANCE OF DECISION

The Cape Cod Commission hereby approves with conditions the application of Joel G. Crowell, President, Cape Cod Cooperative Bank (Applicant) as a Development of Regional Impact Hardship Exemption as outlined in this decision pursuant to Sections 12 and 23 of the Act, c 716 of the Acts of 1989, as amended for the proposed recombination and reorganization of an existing subdivision into a new arrangement of commercial, industrial and open space lots, including the realignment of the existing subdivision road, Rhiannon's Way located at 588 Main Street/Route 130 Mashpee, MA.

12/15/11

Peter Graham
Commission Chair

Date

COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss

Dec 15, 2011

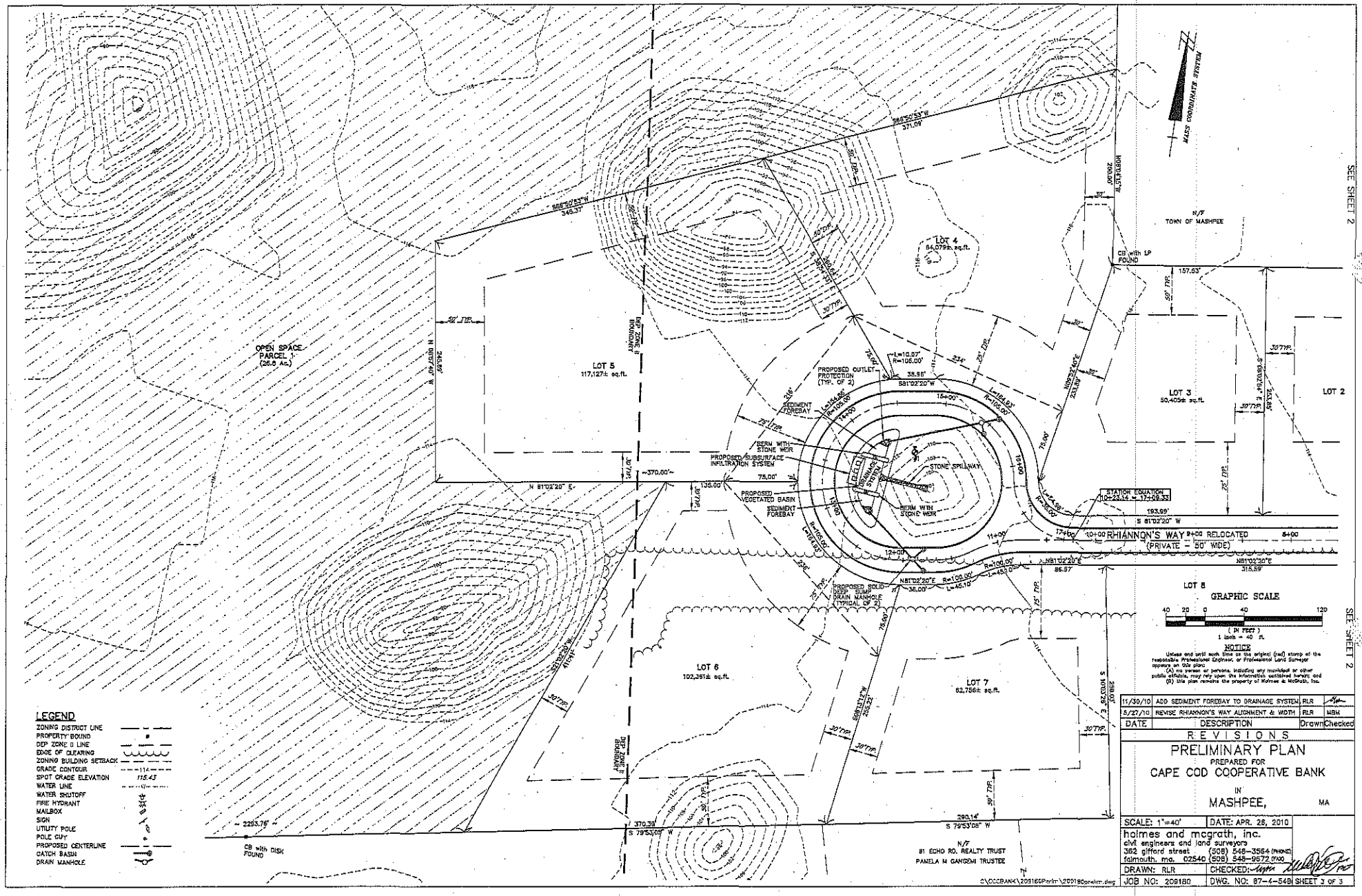
Before me, the undersigned notary public, personally appeared

Peter Graham in his/her capacity as Chair of the Cape Cod Commission, whose name is signed on the preceding document, and such person acknowledged to me that he/she signed such document voluntarily for its stated purpose. The identity of such person was proved to me through satisfactory evidence of identification, which was [_] photographic identification with signature issued by a federal or state governmental agency, [_] oath or affirmation of a credible witness, or [✓] personal knowledge of the undersigned.

Gail P. Hanley
Notary Public

My Commission Expires: 9-28-18

GAIL P. HANLEY
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
September 28, 2018



DATE	DESCRIPTION	Drawn	Checked
11/30/10	ADD SEDIMENT FOREBAY TO DRAINAGE SYSTEM	RLR	
5/27/10	REVISE RHIANNON'S WAY ALIGNMENT & WIDTH	RLR	MBM

REVISIONS

PRELIMINARY PLAN

PREPARED FOR

CAPE COD COOPERATIVE BANK

IN

MASHPEE, MA

SCALE: 1"=40' | DATE: APR. 28, 2010

holmes and mcgrath, inc.
civil engineers and land surveyors
362 gifford street (508) 548-3564 (PHONE)
falmouth, ma. 02540 (508) 548-9672 (FAX)

DRAWN: RLR | CHECKED:

JOB NO: 209180 | DWG. NO: 87-4-54B | SHEET 3 OF 3